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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[Doc. No. AMS–SC–21–0091]

United States Standards for Grades of Processed Raisins

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

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) has revised the U.S. Standards for Grades of Processed Raisins. AMS is modifying two references to the allowances for capstems within the standards to modernize the standards to reflect current industry practices. The revision also includes minor editorial changes to the table headings to align with updated Code of Federal Regulations (CFR) formatting requirements and correction of a typographical error from a previous revision.

DATES: Effective November 16, 2023.

FOR FURTHER INFORMATION CONTACT: Brian E. Griffin, USDA, Specialty Crops Inspection Division, 100 Riverside Parkway, Suite 101, Fredericksburg, VA 22406; Telephone (202) 748–2155; Fax (202) 690–1527; or Email *SCIStandards@usda.gov.* Copies of the U.S. Standards for Grades of Processed Raisins are available on the Specialty Crops Inspection Division website at *https://www.ams.usda.gov/grades-standards/fruits.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations at 7 CFR part 52 issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended. This revision to the U.S. grade standards will also be reflected in enforcement of the grade requirements under the Federal marketing order, 7 CFR part 989, issued under the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601–674) which regulates the handling of raisins produced from grapes grown in California, and 7 CFR part 999, which regulates the importation of raisins into the United States. AMS is revising these U.S. Standards for Grades using the procedures that appear in part 36 of title 7 of the Code of Federal Regulations (7 CFR part 36).

Executive Orders 12866, 13563, and 14094

USDA is issuing this rule in conformance with Executive Orders 12866, 13563, and 14094. 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) has exempted from review under Executive Order 12866.

Executive Order 13175

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 that 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.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Background

AMS continually reviews all fruit and vegetable grade standards to ensure their usefulness to the industry, and to modernize language and remove duplicative terminology. Changes to the headings for all tables within the U.S. Standards for Grades of Processed Raisins are required to reflect current CFR formatting requirements. Conforming changes to cross references to those tables within the standards are also applied. After publication of the proposed rule (88 FR 14296, March 8, 2023) a typographical error was found in Table 1 to § 52.1852—Allowances for Defects in Raisins with Seeds—Except Layer or Cluster. Under Defects, Pieces of Stem, U.S. Grade A, allowances were erroneously listed as 7, and are corrected to read as 1.

On October 13, 2017, AMS received a petition from the Raisin Administrative Committee (RAC), which locally administers the Federal marketing order regulating the handling of raisins produced from grapes grown in California (7 CFR part 989). The petition requested that AMS reduce the number of allowable capstems for all varietals, except Zante Currants, in all three Grades (A, B, and C) as follows: for Type I, Seedless Raisins and Type II, Golden Seedless Raisins the allowances for capstems would change in Grade A, from 15 to 10, in Grade B from 25 to 15, and in Grade C from 35 to 20. For Sultana Raisins the allowances for capstems would change in Grade A from 25 to 10, in Grade B from 45 to 15, and in Grade C from 65 to 20. The RAC further stated that, since 1978, the industry has adopted major improvements, including laser sorters, x-rays, and super vacuums, which allow the industry to clean and sort with far superior results that ultimately exceed the current U.S. Standards for Grades of Processed Raisins.

The AMS Agricultural Analytics Division (AAD) performed a study encompassing a total of 28,059 inspection results of all varietals, except Zante Currants, of both domestically produced raisins and imported raisins to compare USDA inspection results for capstems for a specified period of time with those that would be obtained under the proposed changes submitted

by the RAC based on data collected from AMS offices. AAD found that only slightly more than 1% of raisin inspections would result in a change of grade under the proposed rule.

AMS also contacted the United Nations Economic Commission for Europe's (UNECE) largest member countries that produce raisins; Turkey; Germany, Europe's largest importer and consumer of raisins and dean of the European Union standardization sector; and the International Nut and Dried Fruit Council (INC), the largest international dry produce (fruits and nuts) member organization. AMS reached out in July 2020 and heard responses from October 2020 to February 2021 and ultimately made the decision to continue forward. While there was not consensus on the changes, which is not uncommon, with the AAD finding that only slightly more than 1% of recent raisin inspections would result in a change of grade under the proposed rule, AMS concluded that the proposed rule would not be overly burdensome on the domestic or international market, if enacted.

Comments

On March 8, 2023, AMS published a proposed rule inviting comments on proposed revisions to the U.S. Standards for Grades of Processed Raisins in the **Federal Register** (88 FR 14296). Two anonymous comments were received, one suggesting no price increase based on increased regulation, and one not supporting the proposed changes stating, ''The AMS believes that they will not have a significant impact on the market if they are enacted, so they are not worth to put into effect.''

The intent of the AMS comments regarding the significance of impact on handlers or growers is based on the Initial Regulatory Flexibility Analysis, which considered the economic impact of this action on small entities. Based on the initial Regulatory Flexibility Analysis, AMS does not believe there will be significant impact on handlers' or growers' benefits or costs. AMS is moving forward with the revisions as proposed by the RAC as they provide common language for trade and better reflect the current marketing of processed raisins.

Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened.

According to the industry, there are approximately 2,000 raisin growers in California. According to the National Agricultural Statistics Service (NASS), for the 2020/21 season, the total value of production for raisin grapes was $353,200,000. Taking the total value of production for raisins and dividing it by the total number of raisin growers provides a return per grower of $176,600. A small raisins grower as defined by the Small Business Administration (SBA) (13 CFR 121.201) is one that grosses $4,000,000 [1] or less, annually. Therefore, most raisin producers are considered small entities under SBA's standards.

According to the industry, for the 2020/21 season there are 22 handlers. A small agricultural service firm as defined by the SBA is one that grosses $34,000,000 [2] or less, annually. Based on the annual handler report, for the 2020/21 season, 242,427 tons of raisins have been transferred to handlers for packing and shipment as of August 31, 2021. The average grower price for raisins, for the 2020 crop, was $1,191 per ton. A reasonable assumption is that handlers would sell at a 10 percent markup over the grower price, resulting in a selling price of approximately $1,310 per ton. Multiplying the handler's selling price per ton by the total number of packed tons shipped during the 2020 season provides a gross revenue of $317,579,370. Dividing the total revenue by the number of handlers reveals an average revenue per handler of $14,435,425. Based on the calculations above, the majority of raisin handlers are considered small entities under SBA's standard. This action should not have any impact on handlers' or growers' benefits or costs.

List of Subjects in 7 CFR Part 52

Administrative practice, Fees, Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and recordkeeping requirements, Vegetables.

For reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 52 as follows:

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

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

Authority: 7 U.S.C. 1621–1627.

■ 2. Amend § 52.1846 by:

■ a. Removing, in paragraphs (a), (b), and (c) the words ''Table I of this subpart'' and adding in their places the words ''table 1 to this section''; and

■ b. Revising, in the table following paragraph (d), the heading and the entry for ''Capstems.''

The revisions read as follows:

§ 52.1846 Grades of seedless raisins.

* * * * *

TABLE 1 TO § 52.1846—ALLOWANCES FOR DEFECTS IN TYPE I, SEEDLESS RAISINS AND TYPE II, GOLDEN SEEDLESS RAISINS

Defects	U.S. Grade A	U.S. Grade B	U.S. Grade C
* * * *	*	*	*
	Maximum count (per 16 ounces)		
Capstems	10	15	20
* * * *	*	*	*

[1] The SBA threshold for small producers changed after the publication of the proposed rule. Thus, AMS changed the threshold to reflect the new SBA threshold in this final rule. The change to the raisin producer threshold does not impact AMS's ultimate determination regarding the impact of the rule on small entities.

[2] The SBA threshold for small agricultural service firms (handlers) changed after the publication of the proposed rule. Thus, AMS changed the threshold to reflect the new SBA threshold in this final rule. The change to the handler threshold does not impact AMS's ultimate determination regarding the impact of the rule on small entities.

§ 52.1849 [Amended]

■ 3. Amend § 52.1849 by removing the words ''Table I'' and adding in their place the words ''table 1 to § 52.1846''.

■ 4. Amend § 52.1852 by:

■ a. Removing, in paragraphs (a), (b), and (c), the words ''Table II of this subpart'' and adding in their places the words ''table 1 to this section''; and

■ b. Revising, in the table following paragraph (d), the heading and the entry for ''Pieces of Stem.''

The revisions read as follows:

§ 52.1852 Grades of raisins with seeds—except layer or cluster.

* * * * *

TABLE 1 TO § 52.1852—ALLOWANCES FOR DEFECTS IN RAISINS WITH SEEDS—EXCEPT LAYER OR CLUSTER

Defects	U.S. Grade A	U.S. Grade B	U.S. Grade C
	Maximum count (per 32 ounces)		
Pieces of Stem	1	2	3
* * * *	*	*	*

■ 5. Amend § 52.1853 by:

■ a. Removing, in paragraphs (a) and (b), the words ''Table III of this subpart'' and adding in their place the words ''table 1 to this section''; and

■ b. Revising the heading of the table following paragraph ©.

The revision reads as follows:

§ 52.1853 Grades of raisins with seeds—layer or cluster.

* * * * *

Table 1 to § 52.1853—Allowances for Defects in Layer or Cluster Raisins with Seeds

* * * * *

■ 6. Amend § 52.1855 by:

■ a. Moving table IV to the end of the section following paragraph (d);

■ b. Removing, in paragraphs (a), (b), and (c), the words ''Table IV of this subpart'' and adding in their place the words ''table 1 to this section''; and

■ c. Revising, in the table following paragraph (d), the heading and the entry for ''Capstems.''

The revisions read as follows:

§ 52.1855 Grades of Sultana raisins.

* * * * *

TABLE 1 TO § 52.1855—ALLOWANCES FOR DEFECTS IN SULTANA RAISINS

Defects	U.S. Grade A	U.S. Grade B	U.S. Grade C
* * * *	*	*	*
	Maximum count (per 16 ounces)		
Capstems	10	15	20
* * * *	*	*	*

■ 7. Amend § 52.1857 by:

■ a. Moving table V to the end of the section following paragraph (c);

■ b. Removing in paragraphs (a) and (b) the words ''Table V of this subpart'' and adding in their place the words ''table 1 to this section''; and

■ c. Revising the heading of the table following paragraph (c).

The revision reads as follows:

§ 52.1857 Grades of zante currant raisins.

* * * * *

Table 1 to § 52.1857—Allowances for Defects in Zante Currant Raisins

* * * * *

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–22695 Filed 10–16–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1492; Project Identifier MCAI–2023–00195–T; Amendment 39–22571; AD 2023–20–12]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2022–18–09, which applied to certain Airbus SAS Model A319–111, –112, –113, –114, –115, –131, –132, and –133; A320–211, –212, –214, –216, –231, –232, –233, –251N, and –271N; and A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, and –253N airplanes. AD 2022–18–09 continued to require the actions in AD 2019–26–01 and AD 2021–23–15, and added airplanes to the applicability. Since the FAA issued AD 2022–18–09, it was determined that additional airplanes and galleys are subject to the unsafe condition, and a compliance time for certain airplanes should be extended. This AD continues to require the actions in AD 2022–18–09 and requires expanding the applicability, obtaining and following additional instructions for certain modified airplanes, and extending the compliance time for certain airplanes, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 21, 2023.

The Director of the Federal Register approved the incorporation by reference

of certain publications listed in this AD as of November 21, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1492; 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 service information identified in this final rule, 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–2023–1492.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2023–1492.

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 to supersede AD 2022–18–09, Amendment 39–22160 (87 FR 56576, September 15, 2022) (AD 2022–18–09). AD 2022–18–09 applied to certain Airbus SAS Model A319–111, –112, –113, –114, –115, –131, –132, and –133; A320–211, –212, –214, –216, –231, –232, –233, –251N, and –271N; and A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, and –253N airplanes. AD 2022–18–09 continued to require the actions that were required by AD 2019–26–11, Amendment 39–21022 (85 FR 6755, February 6, 2020) (AD 2019–26–11) (which corresponds to EASA AD 2018–0255) and AD 2021–23–15, Amendment 39–21813 (86 FR 68894, December 6, 2021) (AD 2021–23–15) (which corresponds to EASA AD 2019–0106), and added airplanes to the applicability. The FAA issued AD 2022–18–09 to address potential failure of the galley door and release of waste bins during a rejected take-off or an emergency landing, and potential container detachment from the galley under certain forward loading conditions, possibly resulting in damage to the airplane and injury to occupants.

The NPRM published in the **Federal Register** on July 14, 2023 (88 FR 45115). The NPRM was prompted by AD 2022–0026, dated February 16, 2022, issued by the European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union (EASA AD 2022–0026) (also referred to as the MCAI). The MCAI states that during a full-scale qualification test of Galley G5, the door of the waste compartment opened before the required load was reached. This event was determined to be the result of galley global deflection. This condition, if not corrected, could lead to failure of the galley door and release of waste bins during a rejected take-off or an emergency landing, possibly resulting in damage to the airplane and injury to occupants.

In the NPRM, the FAA proposed to continue to require the actions in AD 2022–18–09 and to require expanding the applicability, obtaining and following additional instructions for certain modified airplanes, and extending the compliance time for certain airplanes. The FAA is issuing this AD to address the potential failure of the galley door and release of waste bins during a rejected take-off or an emergency landing, and potential container detachment from the galley under certain forward loading conditions, possibly resulting in damage to the airplane and injury to occupants.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1492.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from Air Line Pilots Association, International, who supported the NPRM without change.

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, considered the comment 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 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 2023–0029 specifies procedures for modifying the affected galleys by replacing the affected bumpers with serviceable bumpers; for modifying the waste compartment door of each affected galley by installing a door catch bracket and a new striker, and for re-identifying the affected galleys. For airplanes equipped with galleys that were modified using non-Airbus-approved methods, EASA AD 2023–0029 specifies procedures for obtaining and accomplishing additional instructions. 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 1,507 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2022–18–09.	Up to 59 work-hours × $85 per hour = Up to $5,105.	$0	Up to $5,105	Up to $5,476,380.

The FAA has received no definitive data on which to base the cost estimates for the obtaining and following additional instructions action specified in this AD.

The FAA has included all known costs in its cost estimate. According to the 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

The FAA 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 (AD) 2022–18–09, Amendment 39–22160 (87 FR 56576, September 15, 2022); and

■ b. Adding the following new AD:

2023–20–12 Airbus SAS: Amendment 39–22571; Docket No. FAA–2023–1492; Project Identifier MCAI–2023–00195–T.

(a) Effective Date

This airworthiness directive (AD) is effective November 21, 2023.

(b) Affected ADs

This AD replaces AD 2022–18–09, Amendment 39–22160 (87 FR 56576, September 15, 2022) (AD 2022–18–09).

(c) Applicability

This AD applies to the Airbus SAS airplanes specified in paragraphs (c)(1) through (4) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2023–0029, dated February 1, 2023 (EASA AD 2023–0029), except where the Applicability of EASA AD 2023–0029 refers to certain galleys, replace the text ''if equipped with a galley,'' with ''if delivered with a galley.''

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

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

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

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

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by a report that during re-engineering of galley G5, a 9G forward full scale qualification test was performed, and the door of the waste compartment opened before the required load was reached, and by reports of finding container/galley end stop bumpers damaged in service. This AD was also prompted by the determination that additional airplanes and galleys are subject to the unsafe condition, and a compliance time for certain airplanes should be extended. The FAA is issuing this AD to address potential failure of the galley door and release of waste bins during a rejected take-off or an emergency landing, and potential container detachment from the galley under certain forward loading conditions, possibly resulting in damage to the airplane and injury to occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0029.

(h) Exceptions to EASA AD 2023–0029

(1) Where EASA AD 2023–0029 specifies a compliance time of ''within 12 months after 11 December 2018 [the effective date of EASA AD 2018–0255], ''this AD requires replacing those words with ''within 12 months after January 10, 2022 (the effective date of AD 2021–23–15), or within 6 months after the effective date of this AD, whichever occurs later.''

(2) Where EASA AD 2023–0029 refers to May 29, 2019 (the effective date of EASA AD 2019–0106), this AD requires using March 12, 2020 (the effective date of AD 2019–26–11, Amendment 39–21022 (85 FR 6755, February 6, 2020)).

(3) Where EASA AD 2023–0029 specifies a compliance time of ''within 12 months after 02 March 2022 [the effective date of EASA AD 2022–0026],'' this AD requires using ''within 12 months after October 20, 2022 (the effective date of AD 2022–18–09), or within 6 months after the effective date of this AD, whichever occurs later.''

(4) Where EASA AD 2023–0029 refers to its effective date, this AD requires using the effective date of this AD.

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0029.

(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.*

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

(ii) AMOCs approved previously for AD 2022–18–09 are approved as AMOCs for the corresponding provisions of EASA AD 2023–0029 that are required by paragraph (g) of this AD.

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

(3) *Required for Compliance (RC):* Except as required by paragraph (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 (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 2023–0029, dated February 1, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0029, 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 October 5, 2023.

Victor Wicklund,

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

[FR Doc. 2023–22874 Filed 10–16–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1493; Project Identifier MCAI–2022–01105–T; Amendment 39–22569; AD 2023–20–10]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–700–2A12 airplanes. This AD was prompted by a report that some of the multi-function spoiler (MFS) anti-rotation plates failed in-service due to a thin wall design. This AD requires replacing the MFS anti-rotation plates, inspecting the MFS anti-rotation plates for cracking and hinge bolts for evidence of rotation, accomplishing applicable corrective actions, and performing a functional test of the MFS control surfaces. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 21, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 21, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1493; 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 service information identified in this final rule, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* website *bombardier.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2023–1493.

FOR FURTHER INFORMATION CONTACT: Yaser Osman, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@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 certain serial-numbered Bombardier, Inc., Model BD–700–2A12 airplanes. The NPRM published in the **Federal Register** on July 14, 2023 (88 FR 45121). The NPRM was prompted by AD CF–2022–47R1, dated October 11, 2022, issued by Transport Canada, which is the aviation authority for Canada (referred to after this as ''the MCAI''). The MCAI states that a report was received that some of the MFS anti-rotation plates failed in-service due to a thin wall design. The MFS anti-rotation plates were designed with overlapping tolerances on the inside and outside diameters, which allows for an extremely thin wall thickness once machined.

In the NPRM, the FAA proposed to require replacing the MFS anti-rotation plates, inspecting the MFS anti-rotation plates for cracking and hinge bolts for evidence of rotation, accomplishing applicable corrective actions, and performing a functional test of the MFS control surfaces. The FAA is issuing this AD to address MFS anti-rotation plate failures. The unsafe condition, if not addressed, could result in wear and failure of the inboard and outboard spoiler hinge pins, possibly resulting in a hinge no longer supporting the load, or unintended asymmetrical spoiler deployment, leading to reduced controllability of the airplane, or loss of control of the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1493.

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. This AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Bombardier Service Bulletin 700–27–7504, Revision 01, dated July 11, 2022. This service information specifies procedures for replacing the left and right MFS No. 1, MFS No. 2, and MFS No. 3 anti-rotation plate part number (P/N) G05770140–103 and P/N G05770160–101 with P/N G05770140–105. In addition, one of the procedural steps is to inspect the MFS anti-rotation plates for cracking and the hinge bolt for any evidence of rotation, and repair or replacement. This service information also specifies procedures for performing a functional test (stop-to-stop check) of the MFS control-surfaces.

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 the **ADDRESSES** section.

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 FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. perators
3 work-hours × $85 per hour = $255	$2,000	$2,255	$94,710

The FAA has received no definitive data on which to base the cost estimates for the on-condition repairs or replacements specified in this AD.

The FAA has included all known costs in its cost estimate. According to the 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:

2023–20–10 Bombardier, Inc.: Amendment 39–22569; Docket No. FAA–2023–1493; Project Identifier MCAI–2022–01105–T.

(a) Effective Date

This airworthiness directive (AD) is effective November 21, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–700–2A12 airplanes, certificated in any category, serial numbers 70006 through 70129 inclusive.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report that some of the multi-function spoiler (MFS) anti-rotation plates failed in-service due to a thin wall design. The FAA is issuing this AD to address MFS anti-rotation plate failures. The unsafe condition, if not addressed, could result in wear and failure of the inboard and outboard spoiler hinge pins, possibly resulting in a hinge no longer supporting the load, or unintended asymmetrical spoiler deployment, leading to reduced controllability of the airplane, or loss of control of the airplane.

(f) Compliance

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

(g) Replacement and Inspection

(1) Within 36 months after the effective date of this AD, replace the left and right MFS No. 1, MFS No. 2, and MFS No. 3 anti-rotation plate part number (P/N) G05770140–103 and P/N G05770160–101 with P/N G05770140–105, including inspecting the MFS anti-rotation plates for any cracking and the hinge bolts for any evidence of rotation, in accordance with Part 2.B. of the Accomplishment Instructions of Bombardier Service Bulletin 700–27–7504, Revision 01, dated July 11, 2022. If any cracking or evidence of rotation is found, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (i)(1) of this AD.

(2) Before further flight after accomplishing the actions specified in paragraph (g)(1) of this AD: Perform a functional test (stop-to-

stop check) of the MFS control-surfaces in accordance with Step 2.C. (3) of the Accomplishment Instructions of Bombardier Service Bulletin 700–27–7504, Revision 01, dated July 11, 2022.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 700–27–7504, dated March 2, 2022.

(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 manager of the International Validation Branch, mail it to the address identified in paragraph (j)(2) of this AD. Information may be emailed to: *9-avs-nyaco-cos@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 Transport Canada or Bombardier, Inc.'s Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Additional Information

(1) Refer to Transport Canada AD CF–2022–47R1, dated October 11, 2022, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–1493.

(2) For more information about this AD, contact Yaser Osman, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; 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 this AD specifies otherwise.

(i) Bombardier Service Bulletin 700–27–7504, Revision 01, dated July 11, 2022.

(ii) [Reserved]

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

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

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

Issued on October 4, 2023.

Victor Wicklund,

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

[FR Doc. 2023–22871 Filed 10–16–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1996; Project Identifier AD–2022–01361–E; Amendment 39–22570; AD 2023–20–11]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines, LLC Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain International Aero Engines, LLC (IAE LLC) Model PW1124G1–JM, PW1127G–JM, PW1127GA–JM, PW1129G–JM, PW1130G–JM, PW1133G–JM, and PW1133GA–JM engines. This AD was prompted by a manufacturer investigation which revealed that Maintenance, Repair, and Overhaul (MRO) shops were misinterpreting accepted knife edge coating wear limits on the high-pressure compressor (HPC) rear hub. This AD requires replacement of the HPC rear hub with a part eligible for installation. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 1, 2023.

Director of the Federal Register approved the incorporation by reference of a certain publications listed in this AD as of November 1, 2023.

The FAA must receive comments on this AD by December 1, 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–2023–1996; 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 street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For Pratt & Whitney service information identified in this final rule, contact International Aero Engines, LLC, 400 Main Street, East Hartford, CT 06118; phone: (860) 565–0140; email: *help24@prattwhitney.com;* website: *connect.prattwhitney.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2023–1996.

FOR FURTHER INFORMATION CONTACT: Mark Taylor, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7229; email: *mark.taylor@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1996 and Project Identifier AD–2022–01361–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Mark Taylor, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA was notified by the manufacturer that MRO shops misinterpreted the serviceable limits of HPC rear hubs on certain IAE LLC Model PW1124G1–JM, PW1127G–JM, PW1127GA–JM, PW1129G–JM, PW1130G–JM, PW1133G–JM, and PW1133GA–JM engines, and accepted knife edge coating wear that was beyond the design intent. The manufacturer indicated that the intended limit on knife edge coating is no more than 25-percent top coat loss, but shops misinterpreted the limit as no more than 25-percent bond coat loss. Acceptance of coating loss beyond the manufacturer's intended limit may cause heat-induced cracking at the forward and aft knife edge seals and uncontained separation of the HPC rear hub. This condition, if not addressed, could result in uncontained debris release, damage to the engine, damage to the airplane, in-flight shutdown, and loss of the airplane. The FAA is issuing this AD to address the unsafe condition on these products.

FAA's Determination

The FAA is issuing this AD because the agency has determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Pratt & Whitney Service Bulletin PW1000G–C–72–00–0209–00A–930A–D, Issue No: 002, dated June 20, 2023, which provides the list of affected serial numbers for the HPC rear hub. 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**.

AD Requirements

This AD requires replacement of the HPC rear hub with a part eligible for installation.

Justification for Immediate Adoption and Determination of the Effective Date

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

The FAA justifies waiving notice and comment prior to adoption of this rule because no domestic operators use this product. It is unlikely that the FAA will receive any adverse comments or useful information about this AD from any U.S. operator. Accordingly, notice and opportunity for prior public comment are unnecessary, pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the foregoing reasons, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 0 engines installed on 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
Replace HPC rear hub	73 work-hours × $85 per hour = $6,205	$0	$6,205	$0

Authority for This Rulemaking

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

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

Regulatory Findings

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

responsibilities among the various levels of government.

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–20–11 International Aero Engines, LLC: Amendment 39–22570; Docket No. FAA–2023–1996; Project Identifier AD–2022–01361–E.

(a) Effective Date

This airworthiness directive (AD) is effective November 1, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to International Aero Engines, LLC Model PW1124G1–JM, PW1127G–JM, PW1127GA–JM, PW1129G–JM, PW1130G–JM, PW1133G–JM, and PW1133GA–JM engines with an installed high-pressure compressor (HPC) rear hub, part number 30G4008, with a serial number (S/N) listed in Table 2 or Table 3 of Pratt & Whitney Service Bulletin PW1000G–C–72–00–0209–00A–930A–D, Issue No: 002, dated June 20, 2023 (PW1000G–C–72–00–0209–00A–930A–D, Issue No: 002).

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by a manufacturer investigation which revealed that Maintenance, Repair, and Overhaul shops were misinterpreting accepted knife edge coating wear limits. The FAA is issuing this AD to prevent heat-induced cracking at the forward and aft knife edge seals and uncontained separation of the HPC rear hub. The unsafe condition, if not addressed, could result in uncontained debris release, damage to the engine, damage to the airplane, in-flight shutdown, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

At the next engine shop visit after the effective date of this AD, replace the HPC rear hub with a part eligible for installation.

(h) Definitions

(1) For the purpose of this AD, a ''part eligible for installation'' is:

(i) Any HPC rear hub with an S/N that does not appear in Table 2 or Table 3 of PW1000G–C–72–00–0209–00A–930A–D, Issue No: 002; or

(ii) Any HPC rear hub that has been serviced in accordance with Pratt & Whitney Service Bulletin PW1000G–C–72–00–0209–00A–930A–D (any revision).

(2) For the purpose of this AD, an ''engine shop visit'' is the induction of an engine into the shop for maintenance involving the separation of major mating engine flange H. The separation of engine flanges solely for the purpose of transportation without subsequent engine maintenance does not constitute an engine shop visit.

(i) Credit for Previous Actions

You may take credit for the actions required by paragraph (g) of this AD if you performed those actions before the effective date of this AD using Pratt & Whitney Service Bulletin PW1000G–C–72–00–0209–00A–930A–D, Issue No: 001, dated September 13, 2022.

(j) 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 local Flight Standards District Office, as appropriate. If sending information directly to the manager of the AIR–520 Continued Operational Safety Branch, send it to the attention of the person identified in paragraph (k) of this AD and email to: *ANE-AD-AMOC@faa.gov.*

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

(k) Related Information

For more information about this AD, contact Mark Taylor, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7229; email: *mark.taylor@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) Pratt & Whitney Service Bulletin PW1000G–C–72–00–0209–00A–930A–D, Issue No: 002, dated June 20, 2023.

(ii) [Reserved]

(3) For Pratt & Whitney service information identified in this AD, contact International Aero Engines LLC, 400 Main Street, East Hartford, CT 06118; phone: (860) 565–0140; email: *help24@prattwhitney.com;* website: *connect.prattwhitney.com.*

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

(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 October 5, 2023.

Victor Wicklund,

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

[FR Doc. 2023–22849 Filed 10–16–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 43 and 91

[Docket No. FAA–2023–1836; Amdt. Nos. 43–53 and 91–371]

RIN 2120–AL70

Inclusion of Additional Automatic Dependent Surveillance-Broadcast (ADS–B) Out Technical Standard Orders; Incorporation by Reference

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

ACTION: Direct final rule; request for comments.

SUMMARY: This rulemaking amends the Automatic Dependent Surveillance-Broadcast (ADS–B) Out requirements to allow aircraft meeting the performance requirements in Technical Standard Order (TSO)–C166c (Extended Squitter Automatic Dependent Surveillance-Broadcast (ADS–B) and Traffic Information Service-Broadcast (TIS–B) Equipment Operating on the Radio Frequency of 1090 Megahertz (MHz)), or TSO–C154d, (Universal Access Transceiver (UAT) ADS–B Equipment Operating on the Radio Frequency of 978 Megahertz (MHz)) to meet the regulations. Aircraft equipped with

ADS–B Out that meets the performance requirements of either TSO–C166c or TSO–C154d will provide additional information to pilots and air traffic control, including weather information, spectrum monitoring, and airspeed. They will also enable new wake turbulence applications, enhance weather forecasting, and enable or enhance ADS–B In applications such as Flight Interval Management.

DATES: This direct final rule is effective December 18, 2023.

Send comments on or before November 16, 2023. If the FAA receives an adverse comment, the FAA will advise the public by publishing a document in the **Federal Register** before the effective date of this direct final rule. That document may withdraw the direct final rule in whole or in part.

Incorporation by reference: The incorporation by reference of certain publications listed in this rule is approved by the Director of the Office of the Federal Register as of December 18, 2023. The incorporation by reference of certain other publications listed in this rule was approved by the Director of the Office of the Federal Register as of August 11, 2010.

ADDRESSES: Send comments identified by docket number FAA–2023–1836 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 (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.

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 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: Juan Sebastian Yanguas, Airspace Rules & Regulations, AJV–P21, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–8783; email *Juan.S.Yanguas@faa.gov.*

SUPPLEMENTARY INFORMATION:

List of Abbreviations and Acronyms Frequently Used in This Document

ADS–B—Automatic Dependent Surveillance-Broadcast
ATC—Air Traffic Control
ICAO—International Civil Aviation Organization
MHz—Megahertz
MOPS—Minimum Operating Performance Standards
NTSB—National Transportation Safety Board
TCAS—Traffic Collision Avoidance System
TIS–B—Traffic Information Service-Broadcast
TSO—Technical Standard Order
UAT—Universal Access Transceiver

I. Executive Summary

As of January 1, 2020, Federal Aviation Administration (FAA) regulations, codified in title 14 Code of Federal Regulations (14 CFR), §§ 91.225 and 91.227, require aircraft to equip with Automatic Dependent Surveillance-Broadcast (ADS–B) Out to operate in expressly identified airspace areas.[1] ADS–B Out equipment must meet the performance requirements in § 91.227 along with those in Technical Standard Orders (TSO)–C166b or TSO–C154c. This rulemaking revises §§ 91.225 and 91.227 to allow aircraft with equipment that meets the performance requirements in the new TSOs, TSO–C166c and TSO–C154d, to also operate in compliance with the regulations. Specifically, to allow use of these new TSOs, the FAA is incorporating by reference TSO–C166c, TSO–C154d, section 2 of RTCA DO–260C, RTCA DO–260C Change 1, and section 2 of RTCA DO–282C into 14 CFR 91.225 and 91.227. Brief summaries of each document being incorporated by reference can be found in section IV.B. of this preamble. These new performance requirements enable new wake turbulence applications, incorporate functionality for high-altitude and high-velocity vehicles, and enhance weather forecasting. The addition of TSO–C166c and TSO–C154d to the list of permitted TSOs will not negatively affect current users because TSO–C166b and TSO–C154c will remain as acceptable performance requirements.

This rulemaking also makes minor changes to other regulatory sections of part 91. It revises § 91.215 to remove the requirement that transponders reply to intermode interrogations, as International Civil Aviation Organization (ICAO) prohibited those replies in ICAO Annex 10 Volume IV Standards and Recommended Practices and new transponder certifications do not include the capability to reply to intermode interrogations. This rulemaking also removes the requirement in part 43, appendix F, to verify response to an intermode interrogation.

II. Direct Final Rule

An agency typically uses direct final rulemaking when it anticipates that a proposed rule is unnecessary as the rule is considered noncontroversial.[2] The FAA has determined that this rule is suitable for direct final rulemaking as the rule provides an additional means of compliance with ADS–B Out rule requirements developed in conjunction with new industry standards. This amendment will not impose any additional burden on operators whose aircraft are currently equipped with ADS–B Out equipment meeting the performance requirements of TSO–C166b or TSO–C154c. Additionally, this change will increase the ADS–B Out rule compliance options with additional collateral benefits such as new wake turbulence applications, increased functionality for high-altitude and high-velocity vehicles, and enhanced weather forecasting. Moreover, the FAA previously published the TSOs being incorporated by reference in this direct final rule for public comment and addressed the comments received.[3] Any remaining changes adopted by this rulemaking are technical, clarifying, or conforming with current legal interpretations or international requirements. As such, the FAA has determined that this rule is suitable for direct final rulemaking as these changes are noncontroversial.

The FAA is providing notice and seeking comment prior to effectuating changes to the regulation.[4] If the FAA

[1] Section 91.225(h), as redesignated in this rule, requires unmanned aircraft (UA) to equip with ADS–B Out and broadcast when they are operating under a flight plan and in two-way radio communication with air traffic control (ATC). The ADS–B Out equipment must meet the performance requirements in § 91.227 along with those in TSO–C166b or TSO–C154c. Section 91.225(h), as redesignated in this rule, is updated to include the two new TSOs.

[2] 14 CFR 11.13.

[3] The published TSOs and the adjudication of all public comments received for TSO–C166c and TSO–C154d can be found alongside each TSO in the FAA Dynamic Regulatory System (refer to *https://drs.faa.gov*).

[4] *See* Adoption of Recommendations, 60 FR 43109, 43110–43111 (Aug. 18, 1995) (describing Administrative Conference of the United States, Recommendation 95–4, Procedures for Noncontroversial and Expedited Rulemaking).

receives an adverse comment during the comment period, the FAA will advise the public by publishing a document in the **Federal Register** before the effective date of the direct final rule. This document may withdraw the direct final rule in whole or in part. If the FAA withdraws a direct final rule because of an adverse comment, the FAA may incorporate the commenter's recommendation into another direct final rule or may publish a notice of proposed rulemaking (NPRM).[5]

For purposes of this direct final rule, an adverse comment is one that explains (1) why the rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change.[6] In determining whether an adverse comment necessitates withdrawal of this direct final rule, the FAA will consider whether the comment raises an issue serious enough to warrant a substantive response had it been submitted in response to publication of an NPRM. A comment recommending additional provisions to the rule will not be considered adverse unless the comment explains how this direct final rule would be ineffective without the added provisions.[7]

Under the direct final rule process, the FAA does not consider a comment to be adverse if that comment recommends an amendment to a different regulation beyond the regulation(s) in the direct final rule at issue. The FAA also does not consider a frivolous or insubstantial comment to be adverse.[8]

If the FAA receives no adverse comments, the FAA will publish a confirmation notification in the **Federal Register**, generally within 15 days after the comment period closes. The confirmation notification announces the effective date of the rule.[9]

III. Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in title 49 of the United States Code (U.S.C.). Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103 (Sovereignty and use of airspace), and subpart III, section 44701 (General requirements). Under section 40103, the FAA is charged with prescribing regulations on the flight of aircraft (including regulations on safe altitudes) for navigating, protecting, and identifying aircraft, and the efficient use of the navigable airspace. Under section 44701, the FAA is charged 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 regulatory action is within the scope of both sections 40103 and 44701 because it prescribes aircraft performance requirements to meet advanced surveillance needs to accommodate increases in national airspace system operations. As more aircraft operate within United States (U.S.) airspace, the FAA needs improved surveillance performance to accommodate the increased traffic safely and efficiently.

IV. Discussion of the Direct Final Rule

Effective January 1, 2020, 14 CFR 91.225 requires aircraft operators to comply with §§ 91.225 and 91.227 when the aircraft is operated in designated classes of airspace (whereas unmanned aircraft must comply with § 91.225(h), as redesignated by this rule, when in two-way radio communication with air traffic control (ATC) and operating under a flight plan). To comply, the ADS–B Out equipment must meet the performance requirements of § 91.227 and either TSO–C166b or TSO–C154c.[10] Moreover, TSO–C166b and TSO–C154c reference and require compliance with RTCA DO–260B or RTCA DO–282B, respectively, which are minimum operational performance standards (MOPS).

Specifically, § 91.225 states no person may operate an aircraft in Class A airspace unless the aircraft has equipment installed that meets the performance requirements in TSO–C166b and § 91.227. Additionally, no person may operate an aircraft below 18,000 feet mean sea level and in certain airspace described in the regulation unless the aircraft meets either the performance requirements in § 91.227 and either TSO–C166b or TSO–C154c.

A TSO is a minimum performance standard for specified materials, parts, and appliances used on civil aircraft. These standards provide industry with the minimum requirements they must meet to certify an ADS–B Out system. The FAA may recognize certain TSOs as a means of compliance with regulatory requirements, or the regulation may explicitly incorporate the TSO requirements. For §§ 91.225 and 91.227, the FAA has specifically incorporated the TSOs into the regulations. This process ensures a harmonized approach for equipment functionality across equipment manufacturers.

Currently, aircraft with equipment that meet the performance requirements in TSO–C166b or TSO–C154c are in compliance with the regulations. This rulemaking revises §§ 91.225 and 91.227 to include the use of equipment compliant with TSO–C166c (Extended Squitter Automatic Dependent Surveillance-Broadcast (ADS–B) and Traffic Information Service-Broadcast (TIS–B) Equipment Operating on the Radio Frequency of 1090 Megahertz (MHz)) or TSO–C154d (Universal Access Transceiver (UAT) Automatic Dependent Surveillance-Broadcast (ADS–B) Equipment Operating on the Radio Frequency of 978 Megahertz (MHz)) as options to meet the ADS–B Out regulations. These new TSOs increase information available (*e.g.,* weather information or spectrum monitoring); enable new wake turbulence applications; incorporate functionality for high-altitude and high-velocity vehicles; and enhance weather forecasting. They also enable and enhance ADS–B In applications such as Flight Interval Management. These additions will not negatively affect current users, as there is no mandate for users to change from existing ADS–B Out rule-compliant equipment to meet the performance requirements in TSO–C166c or TSO–C154d. Persons using equipment meeting the performance requirements in either TSO–C166b or TSO–C154c may continue to use that

[5] 14 CFR 11.31(c).

[6] 14 CFR 11.31(a).

[7] 14 CFR 11.31(a)(1).

[8] 14 CFR 11.31(a)(1) and (2).

[9] 14 CFR 11.31(b).

[10] The following documents were incorporated by reference into 14 CFR 91.225 and 91.227 as of August 11, 2010 by the final rule, Automatic Dependent Surveillance-Broadcast (ADS–B) Out Performance Requirements To Support Air Traffic Control (ATC) Service, 75 FR 30159 (May 28, 2011):

Technical Standard Order (TSO)–C166b, Extended Squitter Automatic Dependent Surveillance-Broadcast (ADS–B) and Traffic Information Service-Broadcast (TIS–B) Equipment Operating on the Radio Frequency of 1090 Megahertz (MHz) (Dec. 2, 2009);

TSO–C154c, Universal Access Transceiver (UAT) Automatic Dependent Surveillance-Broadcast (ADS–B) Equipment Operating on the Frequency of 978 MHz (Dec. 2, 2009);

Section 2, Equipment Performance Requirements and Test Procedures, of RTCA DO–260B, Minimum Operational Performance Standards for 1090 MHz Extended Squitter Automatic Dependent Surveillance-Broadcast (ADS–B) and Traffic Information Services-Broadcast (TIS–B), December 2, 2009 (referenced in TSO–C166b); and

Section 2, Equipment Performance Requirements and Test Procedures, of RTCA DO–282B, Minimum Operational Performance Standards for Universal Access Transceiver (UAT) Automatic Dependent Surveillance-Broadcast (ADS–B), December 2, 2009 (referenced in TSO–C154c).

equipment after the adoption of this rule.

This rulemaking also revises §§ 91.225 and 91.227 to clearly associate each Technical Standard Order with its associated RTCA document. While Section 2 of RTCA DO–260B and Section 2 of RTCA DO–282B were previously incorporated by reference into §§ 91.225 and 91.227, they were not clearly associated with the TSOs to which they related. With the addition of two new TSOs and three new RTCA documents, it is important each TSO be clearly associated with its referenced RTCA document(s).

A. Addition of TSO–C166c and TSO–C154d Performance Standards

TSO–C166c, which is a subject of this rulemaking, is largely based on RTCA's Minimum Operating Performance Standards (MOPS) for ADS–B Out systems. RTCA is an independent standards development organization comprised of representatives from industry, government, associations, and academia. Representatives from these entities collaborated on the development of an updated standards document for ADS–B Out systems titled RTCA DO–260C, Minimum Operational Performance Standards for 1090 MHz Extended Squitter Automatic Dependent Surveillance-Broadcast (ADS–B) and Traffic Information Services—Broadcast (TIS–B). The same committee subsequently published RTCA DO–260C Change 1 as a supplemental document to correct errors and add clarifications. RTCA made both RTCA DO–260C and RTCA DO–260C Change 1 available to the public through the RTCA website, and the responsible committee adjudicated all comments received.

Specifically, the FAA requires compliance with Section 2 of RTCA DO–260C as modified by Change 1 as part of TSO–C166c. Section 2 establishes equipment performance requirements for 1090 MHz ADS–B systems. Compliance with the TSO, including Section 2 of RTCA DO–260C as modified by Change 1, allows industry to show the FAA that their system is designed and manufactured as required by FAA regulations.

RTCA DO–260C as modified by Change 1, updates the previous RTCA DO–260B performance standard to provide additional capabilities enhancing areas such as safety, equipment performance, airspace efficiency, and data reporting. The substantive changes from the previous MOPS include:

- Changes to support ICAO requirements that Autonomous Distress Tracking automatically provide position information at least once per minute when in distress. Although current § 91.227(c) already requires the position information, the RTCA revision provides a means to initiate broadcast announcing that the aircraft is in distress.
- Additional elements in ADS–B Out messages, including wind and temperature data, to support more precise spacing of aircraft by air traffic control (ATC). In addition, the avionics will be able to support capability for ground radars to extract Flight Interval Management data from the aircraft.
- The broadcast of aircraft-derived weather data for applications such as Flight Interval Management, wake vortex avoidance and surfing, hazardous weather detection and avoidance, and aviation weather forecasting.
- The broadcast of pilot-observed weather during flight, including temperature, wind, turbulence, and hazardous weather information.
- The broadcast of an unmanned aircraft system (UAS)/Remotely Piloted Aircraft System (RPAS) lost link condition. In this condition, the UAS/RPAS may broadcast its contingency plan, identifying the course of action the UAS/RPAS is following.
- Increased the reporting range of altitude and velocity to support commercial space and hypersonic aircraft operations.
- Inclusion of new capabilities for Airborne Collision Avoidance System (ACAS)–X, Detect and Avoid (DAA), as well as future Collision Avoidance Systems (CAS). The new capabilities include expanded information-laying framework for future passive CAS and alternate coordination techniques.
- Improved Geometric Altitude reporting by increasing the reportable difference between geometric and barometric altitude when information for both is available. Additionally, minimized the reporting of no integrity by expanding the Navigation Integrity Category (NIC) reporting when solely geometric altitude is available.
- Provisions for Phase Overlay (PO) techniques enhancing future capacity and efficiency of the 1090 MHz frequency. PO allows for transmission of additional data within existing ADS–B Out messages without the need for additional messages.
- Enhanced requirements for selection of transmission of airborne or surface message formats for aircraft without an automatic means of determining on-the-ground status (*e.g.,* a landing gear weight on wheels switch).
- The broadcast of Interrogation/Reply Monitor data, including measurements of transponder interrogation and reply rate activity.
- Improved emitter category classifications and descriptions to prevent misuse by future applications.
- Transmission of transponder antenna offset information improving tracking of aircraft and vehicles operating on the airport surface by the airport surface detection systems.

TSO–C154d, which is also the subject of this rulemaking, is largely based on RTCA DO–282C, Minimum Operational Performance Standards (MOPS) for Universal Access Transceiver (UAT) Automatic Dependent Surveillance-Broadcast (ADS–B). RTCA made RTCA DO–282C available to the public through the RTCA website, and the responsible committee adjudicated all comments received.

Specifically, the FAA requires compliance with Section 2 of RTCA DO–282C as part of TSO–C154d. Section 2 establishes equipment performance requirements for UAT ADS–B systems. Compliance with the TSO, including Section 2 of RTCA DO–282C, allows industry to show the FAA that their system is designed and manufactured as required by FAA regulations.

RTCA DO–282C updates the previous RTCA DO–282B performance standard to provide additional capabilities enhancing areas such as safety, equipment performance, airspace efficiency, and data reporting. The substantive changes to the previous performance standard include:

- Changes to support ICAO requirements that Autonomous Distress Tracking automatically provide position information at least once per minute when in distress. Although current § 91.227(c) already requires the position information, the RTCA revision provides a means to initiate broadcast announcing that the aircraft is in distress.
- Additional elements in ADS–B Out messages, including wind and temperature data, to support more precise spacing of aircraft by ATC. In addition, the avionics will be able to support capability for ground radars to extract Flight Interval Management data from the aircraft.
- The broadcast of aircraft-derived weather data for applications such as Flight Interval Management, wake vortex avoidance and surfing, hazardous weather detection and avoidance, and aviation weather forecasting.
- The broadcast of pilot-observed weather during flight, including temperature, wind, turbulence, and hazardous weather information.

• The broadcast of a UAS/RPAS lost link condition. In this condition, the UAS/RPAS may broadcast its contingency plan, identifying the course of action the UAS/RPAS is following.

• Increased the reporting range of altitude and velocity to support commercial space and hypersonic aircraft operations.

• Enhanced requirements for selection of transmission of airborne or surface message formats for aircraft without an automatic means of determining on-the-ground status (*e.g.,* a landing gear weight on wheels switch).

• Improved emitter category classifications and descriptions to prevent misuse by future applications.

This rule will allow aircraft with equipment compliant with the performance requirements of TSO–C166c and RTCA DO–260C as modified by Change 1, and TSO–C154d and RTCA DO–282C to operate in the airspace areas identified in § 91.225. Importantly, this rulemaking does not impact any operators currently in compliance with §§ 91.225 and 91.227.

Including TSO–C166c and TSO–C154d in §§ 91.225 and 91.227 allows the use of updated technology to meet ADS–B Out requirements and enables improvements in the ADS–B environment, such as the ability to transmit additional data; and to include ADS–B Out for high-altitude and high-velocity vehicles.

B. Incorporation by Reference

Incorporation by reference (IBR) is a mechanism that allows Federal agencies to comply with the requirements of the Administrative Procedure Act to publish rules in the **Federal Register** and the CFR by referring to material published elsewhere.[11] Material that is incorporated by reference has the same legal status as if it were published in full in the **Federal Register** and the CFR. The standards referenced in this rule include technical information and specifications for equipment and capabilities required to meet FAA ADS–B Out requirements.

The standards referenced in §§ 91.225 and 91.227 of this rule are incorporated by reference with the approval of the Director of the Office of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. In accordance with 5 U.S.C. 552(a) and 1 CFR part 51,[12] all approved materials are available for inspection at the FAA's Office of Rulemaking, 800 Independence Avenue SW, Washington, DC 20590 (telephone (202) 267–9677). This material is also available from the sources indicated in paragraphs (i)(1) and (2) of § 91.225, as redesignated by this rule, and paragraphs (g)(1) and (2) of § 91.227 and as follows:

1. Copies of the following Technical Standard Orders (TSOs) may be obtained from the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse M30, Ardmore East Business Center, 3341 Q 75th Avenue, Landover, MD 20785; telephone (301) 322–5377. Copies are also available on the FAA's website at *www.faa.gov/aircraft/air_cert/design_approvals/tso/.* Select the link ''Search Technical Standard Orders.''

a. TSO–C166c, Extended Squitter Automatic Dependent Surveillance-Broadcast (ADS–B) and Traffic Information Service—Broadcast (TIS–B) Equipment Operating on the Radio Frequency of 1090 Megahertz (MHz) (March 10, 2023);

i. This TSO contains the minimum performance standards that 1090 MHz ADS–B and TIS–B equipment must meet for approval and identification with the applicable TSO marking.

b. TSO–C154d, Universal Access Transceiver (UAT) Automatic Dependent Surveillance-Broadcast (ADS–B) Equipment Operating on the Radio Frequency of 978 Megahertz (MHz) (March 10, 2023).

i. This TSO contains the minimum performance standards that UAT ADS–B equipment and/or UAT diplexers must meet for approval and identification with the applicable TSO marking.

2. Copies of the following documents may be obtained from RTCA, Inc., 1150 18th St. NW, Suite 910, Washington, DC 20036, telephone (202) 833–9339. Copies are also available on the RTCA Inc. Website at *https://www.rtca.org/products.*

a. RTCA DO–260C, Minimum Operational Performance Standards for 1090 MHz Extended Squitter Automatic Dependent Surveillance-Broadcast (ADS–B) and Traffic Information Services-Broadcast (TIS–B), Section 2, Equipment Performance Requirements and Test Procedures, December 17, 2020; and Minimum Operational Performance Standards for 1090 MHz Extended Squitter Automatic Dependent Surveillance-Broadcast (ADS–B) and Traffic Information Services-Broadcast (TIS–B) Change 1, January 25, 2022 (referenced in TSO–C166c);

i. Section 2 of RTCA DO–260C contains the equipment performance requirements and test procedures for 1090 MHz ADS–B and TIS–B equipment.

ii. DO–260C Change 1 contains updates, corrections, and additional material to support the implementation of RTCA DO–260C.

b. RTCA DO–282C, Minimum Operational Performance Standards (MOPS) for Universal Access Transceiver (UAT) Automatic Dependent Surveillance-Broadcast (ADS B), Section 2, Equipment Performance Requirements and Test Procedures, June 23, 2022 (referenced in TSO–C154d).

i. Section 2 of RTCA DO–282C contains the equipment performance requirements and test procedures for UAT ADS–B equipment.

The following standards appear in the amendatory text of this document and were previously approved for the locations in which they appear: TSO–C166b, TSO–C154c, RTCA DO–260B, Section 2, and RTCA DO–282B, Section 2.

C. Advisory Circulars Updated as Part of This Rulemaking

As part of this rulemaking, the FAA is updating FAA Advisory Circular (AC) 90–114B, Automatic Dependent Surveillance—Broadcast Operations, to modify references to the TSOs listed for ADS–B Out equipment that complies with title 14 of the Code of Federal Regulations part 91, §§ 91.225 and 91.227.

D. Miscellaneous Amendments

This rule also includes a number of minor miscellaneous changes to §§ 91.215, 91.225, and 91.227 to incorporate updated ICAO requirements, clarify ambiguities identified in past requests for legal interpretations, clarify vague requirements, correct previous typographical errors, change a physical location address, and ensure valid website links.

The FAA amends §§ 91.215 and 91.227 by replacing the term ''Mode 3/A'' with ''Mode A'' in both § 91.215(b) and § 91.227(d)(7). Mode A is a civilian mode intended to elicit transponder replies for identity and surveillance. Mode 3 is a military mode also used to elicit transponder replies for identity and surveillance. Mode 3 contains all the functionality of Mode A along with additional military-specific capability. For this reason, the military community

[11] 5 U.S.C. 552(a).

[12] 5 U.S.C. 552(a) requires that matter incorporated by reference be ''reasonably available'' as a condition of its eligibility. Further, 1 CFR 51.5(b)(2) requires that agencies seeking to incorporate material by reference discuss in the preamble of the final rule the ways that the material it is incorporating by reference is reasonably available to interested parties and how interested parties can obtain the material.

often uses the term ''Mode 3/A,'' a term the civil community does not widely use. This editorial change will properly emphasize that the regulation requires the Mode A functionality and not the military-specific functionality of Mode 3. In addition, using the term Mode A is consistent with the language used by ICAO and RTCA documents.

This rule also removes the requirement in § 91.215(b) to reply to intermode interrogations, and removes the requirement in part 43, appendix F, to verify response to an intermode interrogation. Currently, § 91.215(b) requires aircraft equipped with a Mode S capability to reply ''to Mode 3/A interrogations with the code specified by ATC and intermode and Mode S interrogations in accordance with the applicable provisions specified in TSO C–112.'' Additionally, part 43, appendix F, paragraph (h), requires verification that an ATC transponder respond to an Air Traffic Control Radar Beacon System (ATCRBS)/Mode S all-call interrogation. ICAO Annex 10 Volume IV establishes two types of intermode interrogations: Mode A/C/S all-call and Mode A/C-only all-call. Mode A/C/S all-call interrogations were designed to produce a Mode S reply in Mode S capable transponders and a Mode A or C reply in non-Mode S capable transponders. Mode A/C-only all-call interrogations were designed to not produce a reply by Mode S capable transponders and to produce a Mode A or C reply in non-Mode S transponders. Therefore, the only type of intermode interrogation that a Mode S transponder was intended to reply to per § 91.215(b) was a Mode A/C/S all-call interrogation. However, ICAO now prohibits replies to Mode A/C/S all-call interrogations in new equipment certifications.[13] Mode A/C/S all-call interrogations were never implemented in U.S. ground radar systems, but the inclusion of this capability within existing transponders led to an increase in what is known as False Replies Un-synchronized In Time (FRUIT). Radio Frequency (RF) propagation effects often result in a Mode A/C-only all-call interrogation appearing to be a Mode A/C/S all-call interrogation at the receiver of a transponder. When a Mode S transponder decodes a Mode A/C/S all-call interrogation, an undesired reply is transmitted by the transponder, resulting in the increase of FRUIT. Removal of the requirement to reply to intermode interrogations ensures compliance with ICAO requirements and reduces the number of unsolicited replies, thus reducing 1090 MHz spectrum congestion. RTCA DO–181F, referenced by TSO–C112f, also prohibits Mode S transponders from responding to Mode A/C/S all-call interrogations. Equipment certified to TSO–C112 versions prior to TSO–C112f will retain the capability to reply to Mode A/C/S all-call interrogations and will continue to be compliant with § 91.215(b).

Accordingly, this rule removes the requirement in 14 CFR part 43, appendix F, paragraph (h), to verify response to an intermode interrogation, specifically the ATCRBS/Mode S all-call formats (1.6 microsecond P4 pulse), which is another name for the Mode A/C/S all-call interrogation. This conforming amendment aligns the inspection and test requirements in part 43 with the ICAO prohibition to reply to Mode A/C/S all-call interrogations.

This rule also amends part 43, appendix F, paragraph (j), which requires verification that the Mode S transponder generates a correct squitter approximately once per second, by clarifying the squitter is an acquisition squitter.

Additionally, the FAA amends § 91.225(e) by adding the term ''engine-driven'' before ''electrical system.'' This amendment will clarify that the relief described in § 91.225 applies to aircraft whose electrical system was not originally or subsequently certificated to be powered by the aircraft's engine. This rephrasing is consistent with the phrase used in § 91.215(b)(3) to describe the same category of aircraft. The difference in language has led to confusion among regulated entities, as evidenced by the FAA's legal interpretation sent to David Schober on January 5, 2017.[14] Mr. Schober requested clarification on the applicability of § 91.225(e) to aircraft that had not been originally certificated with an electrical system but which have subsequently had batteries or electric starters installed. The FAA determined that the intent of the language was to cover the same types of aircraft as in the transponder regulation. This amendment will make it clear that both regulatory provisions refer to the same category of aircraft.

The FAA is revising the definitions for ''Navigation Accuracy Category for Position (NACP)'', ''Navigation Accuracy Category for Velocity (NACV)'', ''Navigation Integrity Category (NIC)'', ''Source Integrity Level (SIL)'', and ''System Design Assurance (SDA)'' in § 91.227(a) to remove the references to TSO–C166b and TSO–C154c. The FAA has determined that including references to these standards in the definitions themselves is unnecessary and could lead to confusion as more Technical Standard Orders are added to this regulation. The FAA notes that references to the Technical Standard Orders appear in the actual regulatory requirements of § 91.227.

Further, the FAA also amends the way it describes the System Design Assurance (SDA) reporting requirements in § 91.227(c)(1)(iv) and the Source Integrity Level (SIL) reporting requirement in § 91.227(c)(1)(v) without changing the underlying substantive requirement itself. Under the FAA's current regulation, the FAA codified numerical values used by RTCA to represent probability values. That is, per DO–260B, an SDA value of 2 represents ''the probability of a position transmission chain fault causing false or misleading position information to be transmitted'' to be $\leq 1 \times 10^{-5}$ per flight hour. This action revises § 91.227(c)(1)(iv) to require an SDA of $\leq 1 \times 10^{-5}$ per flight hour instead of the equivalent RTCA DO–260B value of 2. A SIL of 3 represents ''the probability of the reported horizontal position exceeding the radius of containment (R_C) defined by the NIC, without alerting, assuming no avionics faults'' to be $\leq 1 \times 10^{-7}$ per flight hour or per sample. Therefore, § 91.227(c)(1)(v) will require a SIL value of $\leq 1 \times 10^{-7}$ per flight hour or per sample instead of the equivalent RTCA DO–260B value of 3. This change does not alter the underlying performance requirements. Instead, it codifies the actual probability requirement rather than the equivalent conversion used by RTCA DO–260B. This editorial change makes the regulation's performance requirements clear within the regulation without having to consult RTCA DO–260B. It also ensures that this performance standard remains constant in case RTCA revises SDA and SIL.

Additionally, this rule amends § 91.227(d)(13) to conform to the FAA's intent that the element indicate that the aircraft has the capability to receive ADS–B In services, not necessarily that this capability be installed. The revised regulatory text will replace the current word ''installed'' with the word ''available.'' After the amendment's effective date, § 91.227(d)(13) will require ''[a]n indication of whether ADS–B In capability is available.'' The FAA became aware of the confusion after John D. Collins' September 20, 2012 letter requesting an interpretation

[13] *See* ICAO Annex 10 Vol IV sec. 3.1.2.4.1.3.2.1.

[14] Available at *https://www.faa.gov/about/office_org/headquarters_offices/agc/practice_areas/regulations/interpretations.*

of § 91.227(d)(13).[15] Mr. Collins explained that some aircraft operators use portable ADS–B In receivers without installing the equipment. By using the word ''installed'' in the regulatory language, some aircraft operators and installers believed that an aircraft could not indicate ADS–B In capability if the appropriate equipment was not physically installed on the aircraft.

Per the preamble to the Automatic Dependent Surveillance-Broadcast (ADS–B) Out Performance Requirements to Support Air Traffic Control (ATC) Service published on May 28, 2010,[16] the ADS–B In capability is meant to provide ADS–B ground stations with an indication of what, if any, FAA ADS–B services should be provided to the aircraft. In a legal interpretation sent to John D. Collins on August 23, 2013, the FAA explained that the intent was for this message element to indicate that the aircraft has the capability to receive ADS–B In services, not necessarily that this capability is installed. Therefore, this change clarifies that aircraft are to indicate that ADS–B reception capability is available, even if the system receiving the data is not installed on the aircraft. The FAA ground stations will provide ADS–B In services to all eligible aircraft indicating an ADS–B In capability.

The FAA also clarifies § 91.227(d)(5) by revising ''TCAS II or ACAS'' to ''collision avoidance system.'' While the FAA often uses the term TCAS in various rules and regulations, other nations and ICAO generally use the term ACAS. For this reason, § 91.227 used the term ''TCAS II or ACAS'' in an attempt to reduce confusion. Since the initial publication of § 91.227, the FAA published a new TSO (TSO–C219) for an additional collision avoidance system: ACAS Xa/Xo. TSO–C219 was published by the FAA on February 28, 2020.[17] Additionally, various other collision avoidance systems are currently in development. Due to the long-standing confusion with the terminology, RTCA, ICAO, and international regulators all use the generic term ''collision avoidance system (CAS).'' This editorial change provides enhanced clarity but does not alter the existing broadcast requirements.

Further, the FAA clarifies § 91.227(d)(8) by changing the required broadcast information from ''an indication of the aircraft's call sign that is submitted on the flight plan, or the aircraft's registration number'' to ''an indication of the aircraft identification that is submitted on the flight plan or used for communicating with ATC.'' The change will clarify, not alter, the substantive meaning of the paragraph. On July 27, 2017, the FAA sent an internal request for legal interpretation of § 91.225(d)(8). Some manufacturers and operators interpreted the existing language to mean that the aircraft registration number could be programmed into the aircraft identification field of the ADS–B avionics and yet a different aircraft call sign could be filled in the flight plan. The FAA legal interpretation sent to Jere Hayslett on August 3, 2017, stated that in the preamble to the final rule, to satisfy § 91.227(d)(8) a pilot would have to provide the same call sign on their flight plan as they transmit out using ADS–B to avoid ATC confusion. This amendment makes clear that the aircraft identification included on the flight plan must match the aircraft identification transmitted via ADS–B Out. Furthermore, the change also clarifies that for those aircraft that do not file a flight plan, the aircraft identification transmitted via ADS–B Out must match the aircraft identification used for communicating with ATC and ensures ATC can correlate flight plan information with information displayed on the radar display.

In addition, the FAA is undertaking the following purely clerical changes:

- Corrects typographical errors in §§ 91.225(i)(1), as redesignated by this rule, and 91.227(c) and (g)(1) and (2). These include removing of extra spaces, correcting capitalizations, and correcting placement of dash marks.
- Updates website addresses in §§ 91.225(i) introductory text and (i)(1) and (2), as redesignated by this rule, and 91.227(g) introductory text and (g)(1) and (2).
- Updates the RTCA physical address in §§ 91.225(i)(2), as redesignated by this rule, and 91.227(g)(2).

V. Regulatory Notices and Analyses

Federal agencies consider impacts of regulatory actions under a variety of executive orders and other requirements. First, Executive Order 12866 and Executive Order 13563, as amended by Executive Order 14094 (''Modernizing Regulatory Review''), direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify the costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is $177 million using the most current (2022) Implicit Price Deflator for the Gross Domestic Product. This portion of the preamble summarizes the FAA's analysis of the economic impacts of this rule.

In conducting these analyses, the FAA has determined that this rule has benefits that justify its costs; is not significant as defined in section 3(f)(1) of Executive Order 12866; will not have a significant economic impact on a substantial number of small entities; will not create unnecessary obstacles to the foreign commerce of the United States; and, will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

A. Regulatory Evaluation

ADS–B enhances safety and efficiency and directly benefits pilots, controllers, airports, airlines, and the public. This rule enables additional features of ADS–B Out as an option to meet all ADS–B requirements by revising §§ 91.225 and 91.227. Since this direct final rule maintains the performance standards by providing aircraft operators the option, on a voluntary basis, to implement additional features into the ADS–B equipment, the direct final rule will not incur any costs to the operators and the public. Revising § 91.215 adds no new cost to the public because it removes the requirement to support a capability that has no operational use. By increasing the information available, enabling new wake turbulence applications, incorporating functionality for high-altitude and high-velocity vehicles, and enhancing weather forecasting, this direct final rule has unquantifiable benefits to aircraft operators.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA), Public Law 96–354, (5 U.S.C. 601–612),

[15] Available at *www.faa.gov/about/office_org/headquarters_offices/agc/practice_areas/regulations/interpretations.*

[16] 75 FR 30159.

[17] Available at *https://drs.faa.gov/browse.*

as amended by the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121) and the Small Business Jobs Act (Pub. L. 111–240), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Agencies must perform a review to determine whether a rulemaking would 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. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify, and a regulatory flexibility analysis is not required.

This direct final rule adds an option for aircraft operators to incorporate additional features into ADS–B equipment described in §§ 91.225 and 91.227 and allows for the removal of an unused capability in § 91.215. This direct final rule will not require additional reporting, recordkeeping, and other compliances for small businesses.

Therefore, as provided in section 605(b), the head of the FAA certifies that this direct final rule does not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rule and determined that it will impose no costs on either domestic or international entities and thus has a neutral trade impact.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $177.0 million in lieu of $100 million.

This rule does not contain such a mandate. Therefore, the requirements of title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this direct final rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices (SARPs) to the maximum extent practicable. ICAO plans to update its current SARPs to reflect harmonized changes to both RTCA and EUROCAE minimum performance standards, as appropriate, for ADS–B Out operations. The FAA also will continue to work with the international community to ensure harmonization.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6f for regulations and involves no extraordinary circumstances.

VI. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this direct final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this direct final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. The agency has determined that this rule is not a ''significant energy action'' under the Executive order and the rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, International Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA analyzed this action under the policies and agency responsibilities of Executive Order 13609 and has determined that this action would have no effect on international regulatory cooperation.

VII. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the rule, 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 rulemaking. Before acting on this rulemaking, the FAA will consider all

comments it receives on or before the closing date for comments. The agency may change this rule in light of the comments it receives.

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.*

B. Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this direct final rule 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 direct final rule, 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 direct final rule. Submissions containing CBI should be sent to the person in the **FOR FURTHER INFORMATION CONTACT** section of this document. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

C. Electronic Access and Filing

A copy of this direct final rule, all comments received, any confirmation document, and all background material may be viewed online at *https://www.regulations.gov* using the docket number listed above. A copy of this direct final rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *https://www.federalregister.gov* and the Government Publishing Office's website at *https://www.govinfo.gov.* A copy may also be found on the FAA's Regulations and Policies website at *https://www.faa.gov/regulations_policies.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677. Interested persons must identify the docket or amendment number of this rulemaking.

All documents the FAA considered in developing this rule, including economic analyses and technical reports, may be accessed in the electronic docket for this rulemaking.

D. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit *https://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects

14 CFR Part 43

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 91

Air traffic control, Aircraft, Airports, Aviation safety, Incorporation by reference, Transportation.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

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

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(f), 106(g), 40105, 40113, 44701–44702, 44704, 44707, 44709, 44711, 44713, 44715, 45303.

■ 2. Amend appendix F to part 43 by revising paragraphs (h) and (j) to read as follows:

Appendix F to Part 43—ATC Transponder Tests and Inspections

* * * * *

(h) Mode S All-Call Interrogations: Interrogate the Mode S transponder with the Mode S-only all-call format UF = 11 and verify that the correct address and capability are reported in the replies (downlink format DF = 11).

* * * * *

(j) Squitter: Verify that the Mode S transponder generates a correct acquisition squitter approximately once per second.

* * * * *

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 3. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 4. Amend § 91.215 by revising the introductory text of paragraph (b) to read as follows:

§ 91.215 ATC transponder and altitude reporting equipment and use.

* * * * *

(b) *All airspace.* Unless otherwise authorized or directed by ATC, and except as provided in paragraph (e)(1) of this section, no person may operate an aircraft in the airspace described in paragraphs (b)(1) through (5) of this section, unless that aircraft is equipped with an operable coded radar beacon transponder having either Mode A 4096 code capability, replying to Mode A interrogations with the code specified by ATC, or a Mode S capability, replying to Mode A interrogations with the code specified by ATC and Mode S interrogations in accordance with the applicable provisions specified in TSO–C112, and that aircraft is equipped with automatic pressure altitude reporting equipment having a Mode C capability that automatically replies to Mode C interrogations by transmitting pressure altitude information in 100-foot increments. The requirements of this paragraph (b) apply to—

* * * * *

■ 5. Amend § 91.225 by:

■ a. Revising paragraphs (a)(1), (b), and (e) introductory text.

■ b. Redesignating paragraphs (h) and (i) as set out in the following redesignation table.

Old paragraph	New paragraph
paragraph (h)	paragraph (i).
paragraph (i)	paragraph (h).

■ c. Revising newly redesignated paragraphs (h)(1)(i) and (i).

The revisions read as follows:

§ 91.225 Automatic Dependent Surveillance-Broadcast (ADS–B) Out equipment and use.

(a) * * *

(1) Meets the performance requirements in–

(i) TSO–C166b and Section 2 of RTCA DO–260B (as referenced in TSO–C166b); or

(ii) TSO–C166c and Section 2 of RTCA DO–260C as modified by DO–260C—Change 1 (as referenced in TSO–C166c); and

* * * * *

(b) After January 1, 2020, except as prohibited in paragraph (h)(2) of this section or unless otherwise authorized by ATC, no person may operate an aircraft below 18,000 feet MSL and in airspace described in paragraph (d) of this section unless the aircraft has equipment installed that—

(1) Meets the performance requirements in—

(i) TSO–C166b and Section 2 of RTCA DO–260B (as referenced in TSO–C166b);

(ii) TSO–C166c and Section 2 of RTCA DO–260C as modified by DO–260C—Change 1 (as referenced in TSO–C166c);

(iii) TSO–C154c and Section 2 of RTCA DO–282B (as referenced in TSO–C154c); or

(iv) TSO–C154d and Section 2 of RTCA DO–282C (as referenced in TSO–C154d);

(2) Meets the requirements of § 91.227.

* * * * *

(e) The requirements of paragraph (b) of this section do not apply to any aircraft that was not originally certificated with an engine-driven electrical system, or that has not subsequently been certified with such a system installed, including balloons and gliders. These aircraft may conduct operations without ADS–B Out in the airspace specified in paragraph (d)(4) of this section. These aircraft may also conduct operations in the airspace specified in paragraph (d)(2) of this section if those operations are conducted—

* * * * *

(h) * * *

(1) * * *

(i) That aircraft has equipment installed that meets the performance requirements in TSO–C166b (including Section 2 of RTCA DO–260B, as referenced in TSO–C166b), TSO–C166c (including Section 2 of RTCA DO–260C as modified by DO–260C—Change 1, as referenced in TSO–C166c), TSO–C154c (including Section 2 of RTCA DO–282B, as referenced in TSO–C154c), or TSO–C154d (including Section 2 of RTCA DO–282C, as referenced in TSO–C154d); and

* * * * *

(i) The standards required in this section are incorporated by reference with the approval of the Director of the Office of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This incorporation by reference (IBR) material is available for inspection at the FAA and the National Archives and Records Administration (NARA). Contact the FAA at: Office of Rulemaking (ARM–1), 800 Independence Avenue SW, Washington, DC 20590 (telephone 202–267–9677). For information on the availability of this material at NARA, visit *https://www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* This material is also available from the following sources in this paragraph (i).

(1) U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse M30, Ardmore East Business Center, 3341 Q 75th Avenue, Landover, MD 20785; telephone (301) 322–5377; website: *www.faa.gov/aircraft/air_cert/design_approvals/tso/* (select the link ''Search Technical Standard Orders'').

(i) TSO–C166b, Extended Squitter Automatic Dependent Surveillance-Broadcast (ADS–B) and Traffic Information Service-Broadcast (TIS–B) Equipment Operating on the Radio Frequency of 1090 Megahertz (MHz), December 2, 2009.

(ii) TSO–C166c, Extended Squitter Automatic Dependent Surveillance-Broadcast (ADS–B) and Traffic Information Service-Broadcast (TIS–B) Equipment Operating on the Radio Frequency of 1090 Megahertz (MHz), March 10, 2023.

(iii) TSO–C154c, Universal Access Transceiver (UAT) Automatic Dependent Surveillance-Broadcast (ADS–B) Equipment Operating on the Frequency of 978 MHz, December 2, 2009.

(iv) TSO–C154d, Universal Access Transceiver (UAT) Automatic Dependent Surveillance-Broadcast (ADS–B) Equipment Operating on the Radio Frequency of 978 Megahertz (MHz), March 10, 2023.

(2) RTCA, Inc., 1150 18th St. NW, Suite 910, Washington, DC 20036; telephone (202) 833–9339; website: *www.rtca.org/products.*

(i) RTCA DO–260B, Minimum Operational Performance Standards for 1090 MHz Extended Squitter Automatic Dependent Surveillance-Broadcast (ADS–B) and Traffic Information Services-Broadcast (TIS–B), Section 2, Equipment Performance Requirements and Test Procedures, December 2, 2009.

(ii) RTCA DO–260C, Minimum Operational Performance Standards for 1090 MHz Extended Squitter Automatic Dependent Surveillance-Broadcast (ADS–B) and Traffic Information Services-Broadcast (TIS–B), Section 2, Equipment Performance Requirements and Test Procedures, December 17, 2020.

(iii) RTCA DO–260C, Minimum Operational Performance Standards for 1090 MHz Extended Squitter Automatic Dependent Surveillance—Broadcast (ADS–B) and Traffic Information Services—Broadcast (TIS–B), Change 1, January 25, 2022.

(iv) RTCA DO–282B, Minimum Operational Performance Standards for Universal Access Transceiver (UAT) Automatic Dependent Surveillance-Broadcast (ADS–B), Section 2, Equipment Performance Requirements and Test Procedures, December 2, 2009.

(v) RTCA DO–282C, Minimum Operational Performance Standards (MOPS) for Universal Access Transceiver (UAT) Automatic Dependent Surveillance-Broadcast (ADS–B), Section 2, Equipment Performance Requirements and Test Procedures, June 23, 2022.

■ 6. Amend § 91.227 by:

■ a. In paragraph (a), revising definitions for ''Navigation Accuracy Category for Position (NAC_P)'', ''Navigation Accuracy Category for Velocity (NAC_V)'', ''Navigation Integrity Category (NIC)'', ''Source Integrity Level (SIL)'', and ''System Design Assurance (SDA)''; and

■ b. Revising paragraphs (b)(1), (b)(2)(i) and (ii), (c)(1)(iv) and (v), (d) introductory text, (d)(5) through (8), (11), and (13), and (g).

The revisions read as follows:

§ 91.227 Automatic Dependent Surveillance-Broadcast (ADS–B) Out equipment performance requirements.

(a) * * *

Navigation Accuracy Category for Position (NAC_P) specifies the accuracy of a reported aircraft's position.

Navigation Accuracy Category for Velocity (NAC_V) specifies the accuracy of a reported aircraft's velocity.

Navigation Integrity Category (NIC) specifies an integrity containment radius around an aircraft's reported position.

* * * * *

Source Integrity Level (SIL) indicates the probability of the reported horizontal position exceeding the containment radius defined by the NIC on a per sample or per hour basis.

System Design Assurance (SDA) indicates the probability of an aircraft malfunction causing false or misleading information to be transmitted.

* * * * *

(b) * * *

(1) Aircraft operating in Class A airspace must have equipment installed

that meets the antenna and power output requirements of Class A1S, A1, A2, A3, B1S, or B1 equipment as defined in TSO–C166b and Section 2 of RTCA DO–260B (as referenced in TSO–C166b), or TSO–C166c and Section 2 of RTCA DO–260C as modified by DO–260C—Change 1 (as referenced in TSO–C166c).

(2) * * *

(i) Class A1S, A1, A2, A3, B1S, or B1 as defined in TSO–C166b and Section 2 of RTCA DO–260B (as referenced in TSO–C166b) or TSO–C166c and Section 2 of RTCA DO–260C as modified by DO–260C—Change 1 (as referenced in TSO–C166c); or

(ii) Class A1S, A1H, A2, A3, B1S, or B1 equipment as defined in TSO–C154c and Section 2 of RTCA DO–282B (as referenced in TSO–C154c), or TSO–C154d and Section 2 of RTCA DO–282C (as referenced in TSO–C154d).

(c) * * *

(1) * * *

(iv) The aircraft's SDA must be less than or equal to 10^{-5} per flight hour; and

(v) The aircraft's SIL must be less than or equal to 10^{-7} per flight hour or per sample.

* * * * *

(d) *Minimum Broadcast Message Element Set for ADS–B Out.* Each aircraft must broadcast the following information, as defined in TSO–C166b (including Section 2 of RTCA DO–260B, as referenced in TSO–C166b), TSO–C166c (including Section 2 of RTCA DO–260C as modified by DO–260C—Change 1, as referenced in TSO–C166c), TSO–C154c (including Section 2 of RTCA DO–282B, as referenced in TSO–C154c), or TSO–C154d (including Section 2 of RTCA DO–282C, as referenced in TSO–C154d). The pilot must enter information for message elements listed in paragraphs (d)(7) through (10) of this section during the appropriate phase of flight.

* * * * *

(5) An indication if a collision avoidance system is installed and operating in a mode that can generate resolution advisory alerts;

(6) If an operable collision avoidance system is installed, an indication if a resolution advisory is in effect;

(7) An indication of the Mode A transponder code specified by ATC;

(8) An indication of the aircraft identification that is submitted on the flight plan or used for communicating with ATC, except when the pilot has not filed a flight plan, has not requested ATC services, and is using a TSO–C154c or TSO–C154d self-assigned temporary 24-bit address;

* * * * *

(11) An indication of the aircraft assigned ICAO 24-bit address, except when the pilot has not filed a flight plan, has not requested ATC services, and is using a TSO–C154c or TSO–C154d self-assigned temporary 24-bit address;

* * * * *

(13) An indication of whether an ADS–B In capability is available;

* * * * *

(g) *Incorporation by reference.* The standards required in this section are incorporated by reference with the approval of the Director of the Office of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This incorporation by reference (IBR) material is available for inspection at the FAA and the National Archives and Records Administration (NARA). Contact the FAA at: Office of Rulemaking (ARM–1), 800 Independence Avenue SW, Washington, DC 20590 (telephone 202–267–9677). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* This material is also available from the following sources indicated in this paragraph (g).

(1) U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse M30, Ardmore East Business Center, 3341 Q 75th Avenue, Landover, MD 20785; telephone (301) 322–5377; website: *www.faa.gov/aircraft/air_cert/design_approvals/tso/* (select the link ''Search Technical Standard Orders'').

(i) TSO–C166b, Extended Squitter Automatic Dependent Surveillance-Broadcast (ADS–B) and Traffic Information Service-Broadcast (TIS–B) Equipment Operating on the Radio Frequency of 1090 Megahertz (MHz), December 2, 2009.

(ii) TSO–C166c, Extended Squitter Automatic Dependent Surveillance-Broadcast (ADS–B) and Traffic Information Service-Broadcast (TIS–B) Equipment Operating on the Radio Frequency of 1090 Megahertz (MHz), March 10, 2023.

(iii) TSO–C154c, Universal Access Transceiver (UAT) Automatic Dependent Surveillance-Broadcast (ADS–B) Equipment Operating on the Frequency of 978 MHz, December 2, 2009.

(iv) TSO–C154d, Universal Access Transceiver (UAT) Automatic Dependent Surveillance-Broadcast (ADS–B) Equipment Operating on the Radio Frequency of 978 Megahertz (MHz), March 10, 2023.

(2) RTCA, Inc., 1150 18th St. NW, Suite 910, Washington, DC 20036; telephone (202) 833–9339; website: *www.rtca.org/products.*

(i) RTCA DO–260B, Minimum Operational Performance Standards for 1090 MHz Extended Squitter Automatic Dependent Surveillance-Broadcast (ADS–B) and Traffic Information Services-Broadcast (TIS–B), Section 2, Equipment Performance Requirements and Test Procedures, December 2, 2009.

(ii) RTCA DO–260C, Minimum Operational Performance Standards for 1090 MHz Extended Squitter Automatic Dependent Surveillance-Broadcast (ADS–B) and Traffic Information Services-Broadcast (TIS–B), Section 2, Equipment Performance Requirements and Test Procedures, December 17, 2020.

(iii) RTCA DO–260C, Minimum Operational Performance Standards for 1090 MHz Extended Squitter Automatic Dependent Surveillance-Broadcast (ADS–B) and Traffic Information Services-Broadcast (TIS–B), Change 1, January 25, 2022.

(iv) RTCA DO–282B, Minimum Operational Performance Standards for Universal Access Transceiver (UAT) Automatic Dependent Surveillance-Broadcast (ADS–B), Section 2, Equipment Performance Requirements and Test Procedures, December 2, 2009.

(v) RTCA DO–282C, Minimum Operational Performance Standards (MOPS) for Universal Access Transceiver (UAT) Automatic Dependent Surveillance-Broadcast (ADS–B), Section 2, Equipment Performance Requirements and Test Procedures, June 23, 2022.

Issued under authority provided by 49 U.S.C. 106(f), 40103, and 44701, in Washington, DC.

Polly E. Trottenberg,

Acting Administrator.

[FR Doc. 2023–22710 Filed 10–16–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 748

[Docket No. 231010–0244]

RIN 0694–AJ39

Existing Validated End-User Authorizations in the People's Republic of China: Samsung China Semiconductor Co. Ltd. and SK Hynix Semiconductor (China) Ltd.

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to revise the existing Validated End-User (VEU) list for the People's Republic of China (PRC) by updating the list of eligible items in the EAR for Samsung China Semiconductor Co. Ltd. and SK hynix Semiconductor (China) Ltd. In addition, this rule makes corresponding changes consistent with the scope of the amended authorizations for these VEUs.

DATES: This rule is effective October 17, 2023.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, U.S. Department of Commerce, Phone: 202–482–5991; Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Authorization Validated End-User

Validated End-Users (VEUs) are designated entities located in eligible destinations to which eligible items may be exported, reexported, or transferred (in-country) under a general authorization instead of a license. The names of the VEUs, as well as the dates they were so designated, and the associated eligible destinations (facilities) and items are identified in supplement no. 7 to part 748 of the Export Administration Regulations (EAR, 15 CFR parts 730–774). Pursuant to § 748.15 (Authorization Validated End-User (VEU)), eligible destinations of VEUs may obtain eligible items without the need for the VEUs' supplier to obtain an export or reexport license from BIS. Eligible items vary among VEUs and may include commodities, software, and/or technology, except items controlled for missile technology or crime control reasons on the Commerce Control List (CCL) (supp. no. 1 to part 774 of the EAR).

VEUs are reviewed and approved by the U.S. Government in accordance with the provisions of Section 748.15 and Supplement Nos. 8 and 9 to part 748 of the EAR. The End-User Review Committee (ERC), composed of representatives from the Departments of State, Defense, Energy, Commerce, and other agencies as appropriate, is responsible for administering the VEU program. BIS amended the EAR in a final rule published on June 19, 2007 (72 FR 33646), to create Authorization VEU.

Clarification to Heading of Supplement No. 7 to Part 748

This rule clarifies the heading of supplement no. 7 to part 748 by adding the parenthetical ''(in-country)'' after the word ''transfer'' to make clear that the term that applies to this supplement is transfer (in-country) as described in § 734.16 of the EAR and not the defined term ''transfer'' in § 772.1 of the EAR.

Amendments to Existing VEU Authorizations for Samsung China Semiconductor Co. Ltd. and SK Hynix Semiconductor (China) Ltd.

Revision to the List of Eligible Items for Samsung China Semiconductor Co. Ltd.

In this rule, BIS amends supplement no. 7 to part 748 to revise the list of eligible items that may be exported, reexported or transferred (in-country) to Samsung China Semiconductor Co. Ltd. under Authorization VEU. Specifically, this rule amends the list of items eligible for export, reexport or transfer (in-country) to Samsung China Semiconductor Co. Ltd. under Authorization VEU to read: ''All items subject to the Export Administration Regulations, except ''extreme ultraviolet'' (''EUV'') equipment and ''specially designed'' ''parts,'' ''components,'' ''software,'' and ''technology,'' necessary for the ''development'' or ''production'' of NAND memory. Excluded from §§ 744.6(c)(2)(i–iii), and 744.23(a)(1)(iii) and (a)(2)(iii) of the EAR. See § 748.15(d).''

Revisions to the List of Eligible Items for SK Hynix Semiconductor (China) Ltd.

BIS also amends supplement no. 7 to part 748 to revise the list of items eligible for export, reexport or transfer (in-country) to SK hynix Semiconductor (China) Ltd. under Authorization VEU to read: ''All items subject to the Export Administration Regulations, except ''extreme ultraviolet'' (''EUV'') equipment and ''specially designed'' ''parts,'' ''components,'' ''software,'' and'' technology,'' necessary for the ''development'' or ''production'' of dynamic random-access memory (DRAM). Excluded from §§ 744.6(c)(2)(i–iii) and 744.23(a)(1)(iii) and (a)(2)(iii) of the EAR. See § 748.15(d).''

Amendment to § 748.15 Authorization Validated End-User (VEU)

In addition to the amendments to the lists of eligible items discussed above, BIS also makes corresponding changes to § 748.15, consistent with the scope of the amended authorizations for these VEUs. Specifically, in this rule, BIS adds a new sentence after the first sentence of § 748.15(d) that provides an exclusion to the restrictions of §§ 744.6(c)(2)(i–iii) and 744.23(a)(1)(iii) and (a)(2)(iii) controls. The added sentence states, ''This restriction does not apply to Validated End Users identified in supplement no. 7 to part 748—Authorization Validated End-User (VEU) as excluded from §§ 744.6(c)(2)(i–iii) and 744.23(a)(1)(iii) and (a)(2)(iii).'' This serves to inform exporters that Authorization VEU may be used to overcome the license requirements set forth in §§ 744.6(c) and 744.23(a)(1)(iii) and (a)(2)(iii) for identified VEUs.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

1. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves an information collection approved by OMB under control number 0694–0088, Simplified Network Application Processing System. BIS does not anticipate a change to the burden hours associated with this collection as a result of this rule. Information regarding the collection, including all supporting materials, can be accessed at *https://www.reginfo.gov/public/do/PRAMain.*

3. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of the Export Control Reform Act of 2018, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for

public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

List of Subjects in 15 CFR Part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

Accordingly, part 748 of the EAR (15 CFR parts 730–774) is amended as follows:

PART 748—[AMENDED]

■ 1. The authority citation for part 748 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 4, 2022, 87 FR 48077 (August 5, 2021).

■ 2. Amend § 748.15(d) by adding a sentence after the first sentence to read as follows:

§ 748.15 Authorization Validated End-User (VEU).

* * * * *

(d) * * * Items obtained under authorization VEU in China may be used only for civil end uses and may not be used for any activities described in part 744 of the EAR. The restrictions of §§ 744.6(c)(2)(i) through (iii) and 744.23(a)(1)(iii) and (a)(2)(iii) do not apply to VEUs identified in supplement no. 7 to part 748 as excluded from §§ 744.6(c)(2)(i) through (iii) and 744.23(a)(1)(iii) and (a)(2)(iii). * * *

* * * * *

■ 3. Amend Supplement No. 7 to part 748 by revising the heading of the supplement and the entries for ''Samsung China Semiconductor Co. Ltd.'' and ''SK hynix Semiconductor (China) Ltd.'' in ''China (People's Republic of)'' to read as follows:

Supplement No. 7 to Part 748—Authorization Validated End-User (VEU): List of Validated End-Users, Respective Items Eligible for Export, Reexport and Transfer (In-Country), and Eligible Destinations

Country	Validated end-user	Eligible items (by ECCN)	Eligible destination	**Federal Register** citation
Nothing in this Supplement shall be deemed to supersede other provisions in the EAR, including but not limited to § 748.15(c).				
*	*	*	*	*
Samsung China Semiconductor Co. Ltd.	All items subject to the Export Administration Regulations (EAR), except ''extreme ultraviolet'' (''EUV'') equipment and ''specially designed'' ''parts,'' ''components,'' ''software,'' and ''technology'' therefor, necessary for the ''development'' or ''production'' of NAND memory. Excluded from §§ 744.6(c)(2)(i–iii) and 744.23(a)(1)(iii) and (a)(2)(iii) of the EAR. See § 748.15(d).	Samsung China Semiconductor Co., Ltd., No. 1999, North Xiaohe Road, Xi'an, China 710119.	78 FR 41291, 7/10/13. 78 FR 69535, 11/20/13. 79 FR 30713, 5/29/14. 80 FR 11863, 3/5/15. 88 FR [INSERT PAGE NUMBER], 10/17/23.	

Country	Validated end-user	Eligible items (by ECCN)	Eligible destination	Federal Register citation
*	*	* *	*	* *
SK hynix Semiconductor (China) Ltd.	All items subject to the Export Administration Regulations, except ''extreme ultraviolet'' (''EUV'') equipment and ''specially designed'' ''parts,'' ''components,'' ''software,'' and ''technology,'' necessary for the ''development'' or ''production'' of dynamic random-access memory (DRAM). Excluded from §§ 744.6(c)(2)(i–iii) and 744.23(a)(1)(iii) and (a)(2)(iii) of the EAR. See § 748.15(d).	SK hynix Semiconductor (China) Ltd., Lot K7, Wuxi High-tech Zone, Comprehensive Bonded Zone, Wuxi New District, Jiangsu Province, China 214028.	75 FR 62462, 10/12/10. 77 FR 40258, 7/9/12. 78 FR 3319, 1/16/13. 78 FR 69537, 11/20/13. 88 FR [INSERT PAGE NUMBER], 10/17/23.	
*	*	* *	*	* *

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2023–22873 Filed 10–13–23; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2023–0809]

Special Local Regulations; Marine Events Within the Eleventh Coast Guard District-San Diego Fleet Week Veterans Day Boat Parade.

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulations on the waters of San Diego Bay, CA, during the San Diego Fleet Week Veterans Day Boat Parade on November 12, 2023. This special local regulation is necessary to provide for the safety of the participants, crew, sponsor vessels of the event, and general users of the waterway. During the enforcement periods, the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

DATES: The regulations in 33 CFR 100.1101 for the location described in Item No. 17 in table 1 to § 100.1101, will be enforced from 8:30 a.m. until noon on November 12, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Lieutenant Junior Grade Shelley Turner, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278–7656, email *MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION: *The Coast Guard will enforce the special local regulations in 33 CFR 100.1101 for the location identified in Item No. 17 in table 1 to § 100.1101, from 8:30 a.m. until noon on November 12, 2023, for the San Diego Fleet Week Veterans Day Boat Parade in San Diego Bay, CA. This action is being taken to provide for the safety of life on the navigable waterways during the event. Our regulation for recurring marine events in the San Diego Captain of the Port Zone, § 100.1101, Item No. 17 in table 1 to § 100.1101, specifies the location of the regulated area for the San Diego Fleet Week Veterans Day Boat Parade, which encompasses portions of San Diego Bay. Under the provisions of § 100.1101, persons and vessels are prohibited from entering into, transiting through, or anchoring within this regulated area unless authorized by the Captain of the Port, or his designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.*

In addition to this document in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Local Notice to Mariners and marine information broadcasts.

Dated: October 10, 2023.

J.W. Spitler,

Captain, U.S. Coast Guard, Captain of the Port Sector San Diego.

[FR Doc. 2023–22882 Filed 10–16–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2023–0593]

RIN 1625–AA08

Special Local Regulation; Lake Havasu, Lake Havasu City, AZ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation in the navigable waters of the Bridgewater

Channel, Lake Havasu, AZ during the 12th Annual Bridgewater Channel Cleanup marine event. This regulation is necessary to provide for the safety of the participants, crew, supporting vessels, and general users of the waterway during the event, which will be held on October 21, 2023. This special local regulation will temporarily prohibit persons and vessels from entering into, transiting through, anchoring, blocking, or loitering within the event area unless authorized by the Captain of the Port San Diego or a designated representative.

DATES: This rule is effective from 7 a.m. through 11 a.m. on October 21, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Lieutenant Junior Grade Shelley Turner, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278–7656, email *D11MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because we must establish this special local regulation by October 21, 2023. The Coast Guard did not receive final details regarding this event until September 7, 2023. Therefore, it is impracticable to publish an NPRM because we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. This regulation is necessary to ensure the safety of life on the navigable waters of Lake Havasu during the marine event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because action is needed to ensure the safety of life on the navigable waters of Lake Havasu during the marine event on October 21, 2023.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector San Diego (COTP) has determined that the presence of divers associated with the 12th Annual Bridgewater Channel Underwater Cleanup marine event on October 21, 2023 poses a potential safety concern in the regulated area. This rule is needed to protect persons, vessels, and the marine environment in the navigable waters of Lake Havasu during the marine event.

IV. Discussion of the Rule

This rule establishes a special local regulation from 7 a.m. to 11 a.m. on October 21, 2023. This special local regulation will cover all navigable waters, from surface to bottom in the Bridgewater Channel, Lake Havasu, AZ, starting at the London Bridge, proceeding south through the channel, and concluding at the southern entrance of the channel. The duration of the temporary special local regulation is intended to ensure the safety of participants, vessels, and the marine environment in these navigable waters during the scheduled marine event. No vessel or person will be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the regulated area. The affected portion of the navigable waterway in Lake Havasu will be of very limited duration and is necessary for safety of life of participants in the marine event. Moreover, the Coast Guard will issue a Local Notice to Mariners about the regulated area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation lasting only 4 hours that will prohibit entry to a specific portion of the Bridgewater Channel in Lake Havasu, AZ. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

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

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.T11–134 to read as follows:

§ 100.T11–134 12th Annual Bridgewater Channel Underwater Cleanup, Lake Havasu, Arizona.

(a) *Regulated area.* The regulations in this section apply to the following area: All navigable waters, from surface to bottom, of the Bridgewater Channel in Lake Havasu, AZ, starting at the London Bridge, proceeding south through the channel, and concluding at the southern entrance of the channel.

(b) *Definitions.* As used in this section—

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port San Diego (COTP) in the enforcement of the regulations in this section.

Participant means all persons and vessels registered with the event sponsor as a participant in the race.

(c) *Regulations.* All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the Captain of the Port San Diego or their designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative. They may be contacted by telephone at 619–278–7033. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(3) The COTP will provide notice of the regulated area through advanced notice via Local Notice to Mariners.

(d) *Enforcement period.* This section will be enforced from 7 a.m. to 11 a.m. on October 21, 2023.

Dated: October 10, 2023.

J.W. Spitler,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2023–22884 Filed 10–16–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2023–0794]

RIN 1625–AA09

Drawbridge Operation Regulation; Hackensack River, Jersey City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule and request for comments.

SUMMARY: The Coast Guard is temporarily modifying the operating schedule that governs the PATH Bridge, mile 3.0, across the Hackensack River, at Jersey City, New Jersey. This action is necessary to allow the bridge owner to complete the remaining replacements and repairs.

DATES: This temporary interim rule is effective from 12:01 a.m. on October 17, 2023 through 11:59 p.m. on January 15, 2024. Comments and related material must reach the Coast Guard on or before November 16, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov.* Type the docket number (USCG–2023–0794) in the ''SEARCH'' box and click ''SEARCH''. In the Document Type column, select ''Supporting & Related Material''.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Judy Leung-Yee, Project Officer, First Coast Guard District; telephone 212–514–4336, email *Judy.K.Leung-Yee@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
OMB Office of Management and Budget
NPRM Notice of Proposed Rulemaking
§ Section
U.S.C. United States Code

PATH Port Authority Trans-Hudson

II. Background, Information and Regulatory History

The Coast Guard is issuing this temporary interim rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. This bridge is opening with 24 hours advance notice with one bridge opening during morning and evening rush hours; and will continue to operate on this schedule through January 15, 2024.

On March 22, 2023, April 6, 2023 and June 28, 2023, the Coast Guard issued General Deviations which allowed the bridge owner, Port Authority Trans-Hudson Corporation, to deviate from the current operating schedule in 33 CFR 117.723(b) to conduct major motor and control system repairs. Due to unforeseen system complications, the project has run past the end date of the General Deviation, September 18, 2023. The bridge cannot be brought back to normal operating condition until the completion of the motor and control system. Therefore, there is insufficient time to provide a reasonable comment period and then consider those comments before issuing the modification.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective in less than 30 days after publication in the **Federal Register**. For reasons presented above, delaying the effective date of this rule would be impracticable and contrary to the public interest because the bridge is currently incapable of normal operations and will not be back into full operation until the repairs to the control system can be completed.

We are soliciting comments on this rulemaking. If the Coast Guard determines that changes to the temporary interim rule are necessary, we will publish a temporary final rule or other appropriate document.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this temporary interim rule under authority in 33 U.S.C. 499. The Coast Guard is modifying the operating schedule that governs the PATH Bridge across the Hackensack River, mile 3.0, Jersey City, New Jersey. The PATH Bridge has a vertical clearance of 40 feet at mean high water in the closed position and 135 feet when in the open position.

The existing drawbridge regulation, 33 CFR 117.723(b) states that the draw of the PATH Bridge, mile 3.0, shall open on signal if provided at least two-hours advance notice. The draw need not open for the passage of vessel traffic Monday through Friday, from 6 a.m. to 10 a.m. and from 4 p.m. to 8 p.m. Additional bridge openings shall be provided for commercial vessels from 6 a.m. to 7:20 a.m.; 9:20 a.m. to 10 a.m.; 4 p.m. to 4:30 p.m. and from 6:50 p.m. to 8 p.m. provided at least two-hours advance notice is given. Port Authority Trans-Hudson Corporation, the bridge owner, has requested the bridge open on signal provided at least twenty-four (24)-hours advance notice is given and will provide one bridge opening in the morning and evening rush hours for tide restricted commercial vessels so they may continue the construction project while providing minimal impact on marine traffic.

IV. Discussion of the Rule

The Coast Guard is issuing this rule, which permits a temporary deviation from the operating schedule that governs the PATH Bridge across the Hackensack River, mile 3.0 Jersey City, New Jersey. The rule is necessary to accommodate the completion of the motor and control system replacement until January 15, 2024. Vessels that can transit under the bridge without an opening may do so anytime.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This temporary interim rule has not been designated a ''significant regulatory action,'' under Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, the temporary interim rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the ability that vessels can still transit the bridge through the bridge with advance notice as well as all vessels that do not require an opening may transit.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

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

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and

responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have Tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it 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.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges. Normally, such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

VI. Public Participation and Request for Comments

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

We encourage you to submit comments through the Federal Decision-making Portal at *http://www.regulations.gov*. To do so, go to *https://www.regulations.gov,* type USCG–2023–0794 in the search box and click ''Search.'' Next, look for this document in the ''Search Results'' column, and click on it. Then click on the ''Comment'' option. If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

To view documents mentioned in this rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the ''Document Type'' column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive. Additionally, if you click on the ''Dockets'' tab and then the proposed rule, you should see a ''Subscribe'' option for email alerts. Selecting this option will enable notifications when comments are posted, or if/when a final rule is published.

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

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; DHS Delegation No. 00170.1. Revision 01.3

■ 2. Amend § 117.723 by:

■ a. Staying paragraph (b); and

■ b. Adding paragraph (l).

The addition reads as follows:

§ 117.723 Hackensack River.

* * * * *

(l)(1) The draw of the PATH Bridge, mile 3.0, at Jersey City, shall open on signal provided at least a twenty-four (24)-hour advance notice is provided by calling the number posted at the bridge. The draw need not open for the passage of vessel traffic Monday through Friday, except Federal holidays, from 6 a.m. to 10 a.m. and from 3 p.m. to 7 p.m.

(2) Additional bridge openings shall be provided for tide restricted commercial vessels from 6 a.m. to 7 a.m. and from 6 p.m. to 7 p.m. provided at least a twenty-four (24)-hour advance notice is given by calling Port Authority Trans-Hudson, John Burkhard at 201–410–4260.

Dated: October 11, 2023.

J.W. Mauger,

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

[FR Doc. 2023–22855 Filed 10–16–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0761]

RIN 1625–AA00

Safety Zone; Mission Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of Mission Bay at the Quivira Basin Entrance near San Diego, California. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the California Department of Fish and Wildlife (CDFW) Office of Spill Prevention and Response (OSPR) Sensitive Site Strategy Evaluation Program (SSSEP) boom deployment exercise. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector San Diego.

DATES: This rule is effective from 9:30 a.m. to 11:30 a.m. on October 25, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0761 in the search box and click

''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email LTJG Shelley Turner, Waterways Management, U.S. Coast Guard; telephone 619–278–7656, email *MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM would be impracticable and contrary to the public interest due to the requirement for a boom deployment exercise on October 25, 2023, and the safety concern for anyone within a 100-yard radius of the boom deployment exercise. It is impracticable to publish an NPRM because we must establish this safety zone by October 25, 2023.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with the boom deployment exercise scheduled on October 25, 2023.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector San Diego (COTP) has determined that potential hazards associated with a boom deployment exercise on October 25, 2023, will be a safety concern for anyone within a 100-yard of the exercise. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the boom is deployed, and the exercise is in progress.

IV. Discussion of the Rule

This rule establishes a safety zone from 9:30 a.m. until 11:30 a.m. on October 25, 2023. The safety zone will cover all navigable waters within 100 yards of boom, vessels and equipment being used by personnel to conduct the boom deployment exercise. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the exercise is in progress. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the safety zone being of a limited two-hour duration, limited to a relatively small geographic area, and the presence of safety hazards in the area encompassing the Quivira Basin Entrance.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes,

or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting two hours that will prohibit entry within 100 yards of boom, vessels and equipment being used by personnel to conduct a boom deployment exercise. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–132 to read as follows:

§ 165.T11–132 Safety Zone; Mission Bay, San Diego, CA.

(a) *Location.* The following area is a safety zone: All waters from surface to bottom encompassing a 100-yard radius surrounding the Sensitive Site Strategy Evaluation Program (SSSEP) boom deployment exercise, located at the entrance to Quivira Basin inlet in Mission Bay, CA.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector San Diego (COTP) in the enforcement of the safety zone.

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF Channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate of the enforcement times and dates for the safety zone.

(d) *Enforcement period.* This section will be enforced from 9:30 a.m. to 11:30 a.m. on October 25, 2023.

Dated: October 10, 2023.

J.W. Spitler,

Captain, U.S. Coast Guard, Captain of the Port Sector San Diego.

[FR Doc. 2023–22883 Filed 10–16–23; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2023–0089; FRL–10213–02–R3]

Air Plan Approval; Virginia; 1997 8-Hour Ozone National Ambient Air Quality Standard Second Maintenance Plan for the Hampton Roads Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of Virginia (Commonwealth or Virginia). This revision pertains to the Commonwealth's plan, submitted by the Virginia Department of Environmental Quality (VADEQ), for maintaining the 1997 8-hour ozone national ambient air quality standards (NAAQS) (referred to as the ''1997 ozone NAAQS'') in the Norfolk-Virginia Beach-Newport News (Hampton Roads), VA Area (Hampton Roads Area). EPA is approving this revision to the Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on November 16, 2023.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2023–0089. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* 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 through *www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Om P. Devkota, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2172. Mr. Devkota can also be reached via electronic mail at *devkota.om@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On August 22, 2023 (88 FR 57020), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Virginia. In the NPRM, EPA proposed approval of Virginia's plan for maintaining the 1997 ozone NAAQS in the Hampton Roads Area through December 31, 2032, in accordance with CAA section 175A. The formal SIP revision was submitted by Virginia on September 9, 2022.

II. Summary of SIP Revision and EPA Analysis

On June 1, 2007 (72 FR 30490), EPA approved a redesignation request (and maintenance plan) from VADEQ for the Hampton Roads Area for the 1997 ozone NAAQS. In accordance with CAA section 175A(b), at the end of the eighth year after the effective date of the redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the standard for an additional 10 years, and in *South Coast Air Quality Management District* v. *EPA,*[1] the District of Columbia (D.C.) Circuit held that this requirement cannot be waived for areas, like the Hampton Roads Area, that had been redesignated to attainment for the 1997 8-hour ozone NAAQS prior to revocation and that were designated attainment for the 2008 ozone NAAQS. CAA section 175A sets forth the criteria for adequate maintenance plans. In addition, EPA has published longstanding guidance that provides further insight on the content of an approvable maintenance plan, explaining that a maintenance plan should address five elements: (1) an attainment emissions inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan.[2] VADEQ's September 9, 2022 submittal fulfills Virginia's obligation to submit a second maintenance plan and addresses each of the five necessary elements, as explained in the NPRM.

As discussed in the August 22, 2023 (88 FR 57020) NPRM, EPA allows the submittal of a limited maintenance plan (LMP) to meet the statutory requirement that the area will maintain for the statutory period. Qualifying areas may meet the maintenance demonstration by showing that the area's design value[3] is well below the NAAQS and that the historical stability of the area's air quality levels indicates that the area is unlikely to violate the NAAQS in the future. EPA evaluated VADEQ's September 9, 2022 submittal for consistency with all applicable EPA guidance and CAA requirements. EPA found that the submittal met CAA section 175A and all CAA requirements, and proposed approval of the LMP for the Hampton Roads Area as a revision to the Virginia SIP.

Other specific requirements of Virginia's September 9, 2022 submittal and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. EPA received two supportive comments for this action, which can be found at Docket ID Number EPA–R03–OAR–2023–0089.

III. Final Action

EPA is approving VADEQ's second maintenance plan for the Hampton Roads Area for the 1997 ozone NAAQS as a revision to the Virginia SIP.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts . . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the

[1] 882 F.3d 1138 (D.C. Cir. 2018).

[2] ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni Memo).

[3] The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone nonattainment area is the highest design value of any monitoring site in the area. *www.epa.gov/air-trends/air-quality-design-values.*

CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Statutory and Executive Order Reviews

A. General Requirements

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); 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 CAA;

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, 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. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

VADEQ did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 18, 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, approving VADEQ's second maintenance plan for the Hampton Roads Area for the 1997 ozone NAAQS, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Adam Ortiz,

Regional Administrator, Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (e)(1) is amended by adding an entry for ''1997 8-Hour Ozone National Ambient Air Quality Standard Second Maintenance Plan for the Hampton Roads Area'' at the end of the table to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
1997 8-Hour Ozone National Ambient Air Quality Standard Second Maintenance Plan for the Hampton Roads Area.	Hampton Roads Area (Norfolk-Virginia Beach-Newport News area).	09/09/2022	10/17/2023, [INSERT **Federal Register** CITATION].	The Hampton Roads Area consists of the counties of Gloucester, Isle of Wight, James City, and York, and the cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg.

* * * * *

[FR Doc. 2023–22741 Filed 10–16–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 23–244; RM–11955; DA 23–937; FR ID 178083]

Television Broadcasting Services Knoxville, Tennessee

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission's Media Bureau, Video Division (Bureau) issued a issued a notice of proposed rulemaking in response to a Petition for Rulemaking filed by Tennessee TV, LLC (Petitioner), the licensee of television station WKNX–TV (WKNX–TV or Station), channel 7, Knoxville, Tennessee (Knoxville). The Petitioner has requested the substitution of UHF channel 21 for VHF channel 7 in the Table of TV Allotments. For the reasons set forth in the *Report and Order* referenced below, the Bureau amends FCC regulations to substitute channel 21 for channel 7 at Knoxville.

DATES: Effective October 17, 2023.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647 or *Joyce.Bernstein@fcc.gov.*

SUPPLEMENTARY INFORMATION: The proposed rule was published at 88 FR 48784 on July 28, 2023. The Petitioner filed comments in support of the petition reaffirming its commitment to apply for channel 21. No other comments were filed.

The Bureau believes the public interest would be served by substituting channel 21 for channel 7 at Knoxville, Tennessee. The Commission has recognized that VHF channels pose challenges for their use in providing digital television service, including propagation characteristics that allow undesired signals and noise to be receivable at relatively far distances and large variability in the performance of indoor antennas available to viewers, with most antennas performing very poorly on high VHF channels. In its Supplement, the Petitioner provided a technical analysis showing that while 50,322 persons located along the eastern, southern, and western fringes of the Station's authorized channel 7 NLSC would not be within the proposed channel 21 noise-limited service contour, the entire loss area was within the NLSC of at least five other full power or Class A television stations, including four other full power television stations licensed to Knoxville or a community in the Knoxville Designated Market Area. Although the Petitioner's proposal would result in a number of persons no longer being within WKNX–TV's NLSC when the station moves to channel 21, all of those persons will continue to be well served by at least five other full power or Class A stations, and we find that the overall benefits of the proposed channel change by resolving reception issues outweigh any possible harm to the public interest. This is a synopsis of the Commission's *Report and Order,* MB Docket No. 23–244; RM–11955; DA 23–937, adopted October 6, 2023, and released October 6, 2023. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622, in paragraph (j), amend the Table of TV Allotments, under Tennessee, by revising the entry for Knoxville to read as follows:

§ 73.622 Table of TV allotments.

* * * * *

(j) * * *

Community	Channel No.
* * * * *	
Tennessee	
* * * * *	
Knoxville	10, 15, 21, 26, *29, 34
* * * * *	

[FR Doc. 2023–22857 Filed 10–16–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2021–0154; FF09E22000FXES1113090FEDR 234]

RIN 1018–BE54

Endangered and Threatened Wildlife and Plants; Removing Nelson's Checker-Mallow From the Federal List of Endangered and Threatened Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are removing Nelson's checker-mallow (*Sidalcea nelsoniana*) from the Federal List of Endangered and Threatened Plants. Our review of the best available scientific and commercial data indicates that the threats to Nelson's checker-mallow have been eliminated or reduced to the point that the species no longer meets the definition of an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act).

DATES: This rule is effective November 16, 2023.

ADDRESSES: This final rule and supporting documents, including references cited, the 5-year review, the recovery plan, the species status assessment (SSA) report, and the post-delisting monitoring (PDM) plan, are available at *https://www.regulations.gov* under Docket No. FWS–R1–ES–2021–0154.

FOR FURTHER INFORMATION CONTACT: Kessina Lee, Project Leader, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Ave., Suite 100, Portland, OR 97266; telephone: 503–231–6179. 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:

Previous Federal Actions

On February 12, 1993, we published in the **Federal Register** (58 FR 8235) a final rule listing Nelson's checker-mallow as a threatened species. In 2010, we finalized the Recovery Plan for the Prairie Species of Western Oregon and Southwestern Washington, which includes Nelson's checker-mallow (Service 2010, entire). We conducted a 5-year status review in 2012, and did not recommend reclassification (Service 2012, entire). On May 7, 2018, we announced in the **Federal Register** (83 FR 20088) our initiation of a subsequent 5-year review for the species. We completed the status review in 2021, and therein recommended delisting the species. On April 28, 2022, we published in the **Federal Register** (87 FR 25197) a proposed rule to remove Nelson's checker-mallow from the Federal List of Endangered and Threatened Plants (List).

Peer Review

An SSA team prepared the SSA report for Nelson's checker-mallow (Service 2021, entire). The SSA team was composed of Service biologists, and the team consulted with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review in listing actions under the Act, we solicited independent scientific reviews of the information contained in the Nelson's checker-mallow SSA report. As discussed in the proposed rule, we sent the SSA report to four independent peer reviewers and received no responses. The SSA report was also submitted to our Federal, State, municipal, Tribal, and conservation partners for scientific review. We received responses from two partners, representing a Federal agency and a nonprofit conservation partner. In preparing the proposed rule, we incorporated the results of these reviews, as appropriate, into the SSA report, which was the foundation for the proposed rule and this final rule.

Summary of Changes From the Proposed Rule and Draft Post-Delisting Monitoring Plan

We considered all comments and information we received during the comment period on our proposed rule to delist Nelson's checker-mallow (87 FR 25197; April 28, 2022). This consideration resulted in the following changes from the proposed rule and draft PDM plan to this final rule and the updated PDM plan.

In this final rule, we include updated monitoring data and the results of a partial range-wide survey conducted in 2022, the species' potential response to climate change, and status of reintroduction efforts. We also make nonsubstantive, editorial corrections in our preamble to improve clarity.

We revised the PDM plan by updating the monitoring timetable and schedule to include periodic surveys over a 10-year timeframe, updating tables and text to reflect results of recent monitoring efforts, and making one substitution and one addition to the monitoring site table to better represent the current distribution of the species.

Summary of Comments and Recommendations

In the proposed rule published on April 28, 2022 (87 FR 25197), we requested that all interested parties submit written comments on the proposal by June 27, 2022. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. We did not receive any requests for a public hearing. We received comments from two individuals addressing the proposed rule, representing one public commenter and one State agency. These comments are posted at *https://www.regulations.gov* under Docket No. FWS–R1–ES–2021–0154. The public comment opposed the proposed delisting of the Nelson's checker-mallow but did not provide substantive information that could be evaluated or incorporated, and we do not address it further here. The State agency comment also opposed the proposed delisting and provided substantive information that is addressed below.

Comment (1): The Oregon Department of Agriculture (ODA) commented that there is an overall lack of sufficient data in the SSA report to back up claims of population growth trends, reproduction, and recruitment to support delisting Nelson's checker-mallow. ODA recommended that the Service consider a more robust, comprehensive, methodical, and organized approach to annual monitoring of these vulnerable prairie species, and stated that, based on the SSA report, it is unclear whether populations of this species are self-sustaining or are exhibiting explosive population growth due to intensive out-planting.

Response (1): In accordance with section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*), this delisting determination for Nelson's checker-mallow is based on the best scientific

and commercial data available. The Service considered population growth, reproduction, and recruitment of Nelson's checker-mallow in the SSA report when assessing the species' resiliency. We recognize that sites are not monitored regularly throughout the entire range, and that there is interannual variation in abundance at sites. However, monitoring data from the time of listing through 2022 show an overall trend of population growth with increasing abundance and an increasing number of known sites. At the time of listing, there were 49 known sites, of which 19 had 100 to 999 plants, and 5 had 1,000 plants or more (Service 2012, pp. 17–19). Of the 66 sites known at the time of the SSA report, 28 had 100 to 999 plants, and 24 sites had 1,000 plants or more (Service 2021, pp. 17–18). Restoration activities include establishment of 51 new sites (*i.e.,* out-plantings) and augmentation of 15 existing sites. At this time, population increases are driven by restoration activities and not natural recruitment; however, seedlings have been observed on most (35 of 65) surveyed sites (Silvernail et al. 2016, pp. 21–24).

In 2022, the Service funded a partial range-wide survey (less than 50 percent of known sites) of Nelson's checker-mallow (Service 2022, entire). Within sites, the survey focused on obtaining an inventory of larger patches of Nelson's checker-mallow plants, so most smaller and isolated patches were not included. A total of 62 patches, including more than 86 percent of the plants known to exist, were surveyed. Overall, the population remains high with over 369,000 plants counted, reflecting an overall increase of approximately 30,000 plants since completion of the SSA report in 2021. Restored sites continue to contribute more than 90 percent of individuals (Service 2022, p. 5).

Comment (2): ODA commented that while there have been successful artificial reintroductions, because of the dearth of population trend, reproduction, and demographic data, there is no sense of how reintroductions have performed since 2017, when the last range-wide species survey was undertaken. ODA recommended that the Service demonstrate long-term viability of these reintroduction efforts through focused, long-term monitoring before delisting the species.

Response (2): While there have not been more recent range-wide species surveys since 2017, monitoring of 62 patches in 2022 (including more than 86 percent of known Nelson's checker-mallow plants) demonstrated the population remains high and restored sites continue to contribute more than 90 percent of individuals (Service 2022, p. 5).

In addition, the Service notes in the SSA report that long-term monitoring data are not currently available for the majority of Nelson's checker-mallow sites and were not a component of our resiliency assessment (Service 2021, p. 26). We are required to make our determinations based on the best available scientific and commercial data at the time the determination is made. Current data indicate that since the Nelson's checker-mallow was listed as threatened in 1993, the species has increased in both number and size of populations, with a majority of populations under management plans or public ownership, such that the species is no longer in danger of extinction within the foreseeable future throughout all or a significant portion of its range. Considering the best scientific and commercial information available, Nelson's checker-mallow also does not meet the Act's definition of a threatened species. Finally, the PDM plan outlines a 10-year monitoring plan with specific criteria for site selection, data collection and analysis methods, and reporting requirements to track the species' status. The PDM plan also contains thresholds for population numbers and distribution, and triggers for management protections to ensure that Nelson's checker-mallow remains secure from the risk of extinction following delisting.

Comment (3): ODA recommended that the Service increase its reintroduction efforts in the northern recovery zones given the statement in the SSA report that Coast Range, Portland, and Southwest (SW) Washington are known to have the minimum number of populations but do not meet the recovery goals for abundance.

Response (3): At the time the SSA report was written, recovery goals for abundance in the Coast Range (15,000 plants), Portland (5,000 plants), and SW Washington (10,000 plants) recovery zones had not been met. Since that time, more than 11 new introduction sites have been established across the species' range. While the Coast Range and SW Washington recovery zones remain below their abundance goals, the Portland recovery zone now exceeds its abundance goal. Recent surveys also show increasing trends in plant abundance across the species' range with the total number of plants increasing from 334,968 at the time of the SSA report (Service 2021, p. 15) to 426,032 in 2022 (Service 2022, pp. 2–3). Support for the ongoing conservation of Nelson's checker-mallow has been high among government agencies, nongovernmental conservation organizations, and some private landowners. It is anticipated that priority recovery and management actions, including additional reintroduction efforts, will continue at approximately the current pace and that the species will continue to benefit from this ongoing conservation support.

Comment (4): ODA expressed a concern about the species' ability to adapt to climate change given the recent drought and extreme heat coupled with the most successful recovery zones occurring at the southern end of the species' range. They emphasized the need for a better understanding of the magnitude and urgency of the threats and that data beyond 2020/2021 would be helpful in understanding the species' response to future climate conditions.

Response (4): The Service reviews the best scientific and commercial information available when conducting a threats analysis. The identification of factors that could impact a species negatively is not sufficient to compel a finding that listing (or maintaining a currently listed species) on the Federal Lists of Endangered or Threatened Wildlife and Plants is appropriate. In determining whether a species meets the definition of a threatened or endangered species, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level, as well as the cumulative effect of the threats.

In our assessment of future viability of the species in the SSA report, we considered a worst case scenario that assumed that the anticipated effects of climate change would result in the reduction of Nelson's checker-mallow populations by 50 percent within a period of 25 to 50 years (Service 2021, pp. 29–30). However, even under this scenario, our analysis suggests that loss of resiliency will be modest, with 60 sites remaining in moderate or high condition, no change in the number of recovery zones that meet recovery goals, and no major changes in redundancy or representation expected. Collectively, this suggests that in 25 to 50 years, viability of the species will not be significantly reduced (Service 2021, p. 31). In addition, Nelson's checker-mallow has a deep taproot that allows it to access groundwater and soil water that may help it survive extended periods of drought. At present, quantitative estimates of the impacts of increased temperatures and precipitation changes on Nelson's

checker-mallow are not available outside of our analysis.

Current data are insufficient to analyze how populations are affected by year-to-year variation in weather. All species have the potential to be negatively impacted by climate change. Recovery efforts have increased this species' resiliency, redundancy, and representation such that the species is now better able to recover from impacts. Effects may be further buffered if adaptive management strategies are implemented at sites under public or conservation organization ownership. Many of the populations of Nelson's checker-mallow are on lands that will be managed in perpetuity. While 30 populations are in the two southernmost zones, there are 12 additional independent populations dispersed across other recovery zones that were considered in the analysis of the species' resiliency, redundancy, and representation. In addition, there are currently more than 900 pounds of seed in storage with more in production, and reintroduction efforts are expected to continue as part of prairie restoration at both public and private sites.

Background

Nelson's checker-mallow is an herbaceous perennial plant in the mallow family (Malvaceae). It produces 30 to 100 lavender to deep-pink flowers arranged on an elongated, branched stalk. Plants range from 50 to 150 centimeters (20 to 60 inches) in height. Plants produce short, thick, twisted rhizomes (creeping underground stems), as well as a system of fine roots extending from a taproot (a stout main root) (Service 2010, appendix F, pp. F–3–F–4).

Nelson's checker-mallow is found in the Willamette Valley and the Coast Range of Oregon and Washington. It occupies a variety of prairie habitats and soil types but is typically associated with open sites. In the Willamette Valley, the species occasionally occurs in the understory of Oregon ash (*Fraxinus latifolia*) woodlands or among woody shrubs, but more frequently occupies native prairie remnants, including those at the margins of sloughs, ditches, streams, roadsides, fence rows, drainage swales, and fallow fields (Glad et al. 1994, pp. 314–321). In the Coast Range, Nelson's checker-mallow typically occurs in open, wet to dry meadows; in intermittent stream channels; and along margins of coniferous forests (Glad et al. 1987, pp. 259–262).

Once established, Nelson's checker-mallow plants are hardy; if plants become established at a site, they usually persist (Bartow 2020, pers. comm.). Their long taproot allows them to access subsurface water sources, and individual plants are long-lived (Dillon 2021, pers. comm.). In addition, regeneration from the taproot is possible after the aboveground and upper taproot portions of the plant have been removed (Dillon 2021, pers. comm.).

A thorough review of the taxonomy, life history, and ecology of Nelson's checker-mallow is presented in version 1.0 of the SSA report (Service 2021, entire).

Recovery Criteria

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of section 4 of the Act, that the species be removed from the List.

Recovery plans provide a roadmap for us and our partners on methods of enhancing conservation and minimizing threats to listed species, as well as measurable criteria against which to evaluate progress towards recovery and assess the species' likely future condition. However, they are not regulatory documents and do not substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of a species, or to delist a species, is ultimately based on an analysis of the best scientific and commercial data available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all of the criteria in a recovery plan being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished. In that instance, we may determine that the threats are minimized sufficiently, and that the species is robust enough that it no longer meets the Act's definition of an endangered species or a threatened species. In other cases, we may discover new recovery opportunities after having finalized the recovery plan. Parties seeking to conserve the species may use these opportunities instead of methods identified in the recovery plan. Likewise, we may learn new information about the species after we finalize the recovery plan. The new information may change the extent to which existing criteria are appropriate for identifying recovery of the species. The recovery of a species is a dynamic process requiring adaptive management that may, or may not, follow all the guidance provided in a recovery plan.

The Recovery Plan for the Prairie Species of Western Oregon and Southwestern Washington (recovery plan) divides the geographic area covered by included species into recovery zones, which provides a framework for recovering the species' historical ranges. Nelson's checker-mallow historically occupied seven recovery zones: SW Washington, Portland, Coast Range, Salem East, Salem West, Corvallis East, and Corvallis West. The following discussion provides an assessment of the species' status relative to the five delisting criteria outlined in the recovery plan.

Delisting Criterion 1: Distribution and Abundance

The recovery plan specifies that the distribution of populations should reflect the extent of the species' historical geographic distribution to the extent practicable and identifies goals for a minimum number of populations and target number of plants per recovery zone, as follows: 5,000 plants in 1 population in the Portland recovery zone; 10,000 plants in 2 populations in the SW Washington, Salem East, and Corvallis East recovery zones; 15,000 plants in 3 populations in the Coast Range recovery zone; and 20,000 plants in 4 populations in the Salem West and Corvallis West recovery zones.

The recovery plan further specifies that, with the exception of the Portland recovery zone, this may be achieved with a combination of at least 2 populations that number at least 2,000 individuals; scattered independent populations must number at least 200 individuals to add up to the target number in each zone. The range-wide delisting goal is 100,000 plants occurring in 20 populations.

At the time of the SSA report, a total of 334,968 individual plants were distributed across the historical range of the species. Considering only the sites considered independent populations (having at least 200 plants), there were 332,935 individual plants, found in 42 populations distributed across 6 of the 7 recovery zones (Service 2021, pp. 15, 27). Recent surveys show continued increases in plant abundance across the

species' range, with the total number of plants increasing to 426,032 in 2022 (Service 2022, pp. 2–3).

At the time of the SSA report, the Corvallis West and Salem West recovery zones met both the abundance and distribution goals outlined in the recovery plan. Collectively, these 2 recovery zones contained 71 percent of the populations (30 populations) and 95 percent of the individual plants (313,662 plants) known to exist. A third zone, Salem East, contained 9,519 plants, occurring in three populations, essentially meeting the distribution and abundance goals of 10,000 plants distributed among 2 populations. Three zones (Coast Range, Portland, and SW Washington) had the minimum number of populations but did not meet the recovery goals for abundance. The remaining zone, Corvallis East, did not have any sites that met the definition of an independent population.

Surveys in 2022 included a new site in the Corvallis East zone, so all recovery zones are now occupied (Service 2022, p. 3). Introduced populations in the Salem East and Portland zones have been established, and those zones now meet overall abundance goals per the recovery plan. Overall, the population at the sites that were included in our analysis for the SSA increased from about 333,000 plants (Service 2021, p. 17) to about 370,000 plants in 2022 (Service 2022, p. 3).

The abundance and distribution goal of 100,000 plants in 20 populations has been exceeded, with numbers of nearly 333,000 plants in 42 populations, per the SSA report (Service 2021, p. 17) and more than 370,000 plants in those 42 populations in 2022 (Service 2022, pp. 2–3). While the plants and populations are not distributed among recovery zones precisely as identified in the recovery plan, they are distributed throughout the historical range of the species. We conclude that the intent of this criterion, which is to minimize extinction risk by ensuring a sufficient number and distribution of plants and populations, has been satisfied.

Delisting Criterion 2: Population Trend and Evidence of Reproduction

The recovery plan notes that the number of individuals in the population (or area of foliar cover) shall have been stable or increasing over a period of at least 15 years. Stable does not mean that the population size is static over time; over a period of 15 years, the number of individuals in the population may exhibit natural year-to-year variability, but the trend must not be declining. Populations must show evidence of reproduction by seed set or presence of seedlings.

While taking into account varying methodologies and irregular population monitoring throughout the species' range, the overall abundance of Nelson's checker-mallow has increased markedly since listing in 1993. Range-wide, both the number of independent populations (having 200 plants or more) and the total number of plants continue to increase. In addition, more populations have a larger number of individuals than at the time of listing, as shown in table 1, below (Service 2012, pp. 17–19; Service 2021, p. 18), and these data indicate an overall positive trend since the time of listing and since the 2012 5-year review.

TABLE 1—NUMBER OF SITES WITH MORE THAN 100 PLANTS AND MORE THAN 1,000 PLANTS FOR EXAMPLE YEARS

Year	Sites with 100–999 plants	Sites with ≥1,000 plants
1993	19	5
2012	26	4
2021	28	24

Additionally, seedlings were observed on most sites, as confirmed on 35 of 65 surveyed sites (Silvernail et al. 2016, pp. 21–24), and overall abundance is increasing throughout the recovery zones. Given that the number of individual plants has increased, and large populations have been successfully established, we conclude that this criterion has been met.

Delisting Criterion 3: Habitat Quality and Management

The recovery plan specifies that sites supporting populations of Nelson's checker-mallow must meet the following three criteria related to habitat quality and management:

1. *Prairie quality.* Sites supporting populations of Nelson's checker-mallow must be managed for high-quality prairie habitat, which consists of a diversity of native, non-woody plant species; low frequency of aggressive, nonnative plant species and encroaching woody species; and essential habitat elements for native pollinators.

2. *Security of habitat.* A substantial portion of the habitat for the populations should either be owned or managed by a government agency or private conservation organization that identifies maintenance of the species and the prairie ecosystem upon which it depends as the primary management objective for the site, or the site must be protected by a permanent or long-term conservation easement or covenant that commits present and future landowners to the conservation of the species.

3. *Management, monitoring, and control of threats.* Each population must be managed appropriately to ensure the maintenance or restoration of quality prairie habitat and to control threats to the species. Use of herbicides, mowing, burning, or livestock grazing in management should be implemented with appropriate methods and timing to avoid impacts to listed plant species. Management should be coordinated with adjacent landowners to minimize effects of pesticide drift, changes in hydrology, timber harvest, or road/utility maintenance. Species that may hybridize with Nelson's checker-mallow should be managed as appropriate to avoid contact with these taxa. Other potential threats relating to scientific research, overcollection, vandalism, recreational impacts, or natural herbivory/parasitism should be successfully managed so as not to significantly impair recovery of the species. Management and monitoring plans must be approved by the Service and should include standardized monitoring and performance criteria that will be used to assess the plans' effectiveness following implementation and to allow for adaptive management, as necessary. Management plans should include a focus on protecting habitat heterogeneity within protected sites and across a range of elevations and aspects to buffer the potential effects of climate change.

Of the 42 independent populations of Nelson's checker-mallow (having 200 plants or more), 38 have formal management plans that address habitat quality and threats. Of these 38 populations, 26 are in public ownership and thus are considered protected in perpetuity from development; one site is owned and protected by a nongovernmental conservation organization; and the remaining 11 privately owned sites are protected by conservation easements. Four of the 42 populations, which account for less than 1 percent of the total number of Nelson's checker-mallow plants, and 10 percent of the populations, have no protection and lack management plans. Given that a majority of populations are managed in accordance with a formal management plan and are protected by virtue of ownership or conservation easement, we conclude that this recovery criterion has been met.

Delisting Criterion 4: Genetic Material Is Stored in a Facility Approved by the Center for Plant Conservation

The recovery plan specifies that stored genetic material in the form of seeds must represent the species' geographic distribution and genetic diversity through collections across the full range of the species. Collections from large populations are particularly important as reservoirs of genetic variability within the species.

Nelson's checker-mallow seeds are currently stored at four separate repositories. The majority of stored seeds, approximately 408 kilograms (900 pounds) or about 112,500,000 seeds, are located at the Corvallis Plant Materials Center (PMC) operated by the Natural Resources Conservation Service (NRCS) of the U.S. Department of Agriculture (USDA) in Corvallis, Oregon. Seeds in this collection were sourced primarily from production fields, which are maintained specifically to produce seed, and are used for habitat restoration, population augmentation, and out-planting throughout the range of the species. In addition, approximately 29,000 seeds are stored at the Rae Selling Berry Seed Bank at Portland State University in Portland, Oregon. This collection was sourced from Lane, Linn, Benton, Marion, Polk, Yamhill, and Tillamook Counties in Oregon, and Lewis County in Washington. A third, smaller collection of approximately 705 Nelson's checker-mallow seeds from locations in Washington is held at the Miller Seed Vault at the University of Washington's Botanical Gardens in Seattle, Washington.

In addition to storage in these three regional repositories, a subset of seeds from the Rae Selling Berry Seed Bank and the Miller Seed Vault has been sent to the National Laboratory for Genetic Resource Preservation at Colorado State University in Fort Collins, Colorado. Both the Rae Selling Berry Seed Bank and Colorado State University facility are certified by the Center for Plant Conservation. Collectively, the stored seed represents the geographic range of Nelson's checker-mallow, and part of this stored seed is in facilities certified by the Center for Plant Conservation. Therefore, we conclude that this criterion has been met.

Delisting Criterion 5: Post-Delisting Monitoring (PDM) Plans and Agreements To Continue PDM Are in Place and Ready for Implementation at the Time of Delisting

The recovery plan specifies that monitoring of populations following delisting will verify the ongoing recovery of the species, provide a basis for determining whether the species should be again placed under the protection of the Act, and provide a means of assessing the continuing effectiveness of management actions.

The PDM plan for Nelson's checker-mallow outlines an approach to monitoring Nelson's checker-mallow for a period of 10 years after the species is delisted. This plan addresses the current status of the species and provides details associated with monitoring methods and implementation, including site selection, data analysis, monitoring schedules, and reporting expectations. It also describes potential outcomes in the context of how secure the species remains after delisting. In addition, the PDM plan outlines roles and responsibilities and estimates associated costs. The PDM plan is available at Docket No. FWS–R1–ES–2021–0154 on *https://www.regulations.gov.*

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species. In 2019, jointly with the National Marine Fisheries Service, the Service issued a final rule that revised the regulations in 50 CFR part 424 regarding how we add, remove, and reclassify endangered and threatened species and the criteria for designating listed species' critical habitat (84 FR 45020; August 27, 2019). On the same day, the Service also issued final regulations that, for species listed as threatened species after September 26, 2019, eliminated the Service's general protective regulations automatically applying to threatened species the prohibitions that section 9 of the Act applies to endangered species (84 FR 44753; August 27, 2019).

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects. We consider these same five factors in delisting a species (50 CFR 424.11(c) and (e)).

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—at an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting a cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in

the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term foreseeable future extends only so far into the future as we can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be listed as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decision, which involves the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS–R1–ES–2021–0154 on *https://www.regulations.gov.*

To assess Nelson's checker-mallow viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy is the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation is the ability of the species to adapt to both near-term and long-term changes in its physical and biological environment (for example, climate conditions, pathogen). In general, species viability will increase with increases in resiliency, redundancy, and representation (Smith et al. 2018, p. 306). Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decisions.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability.

Ecological Needs

Nelson's checker-mallow usually occupies open habitats that are free from encroachment of trees and shrubs. In the absence of disturbance to set back succession, prairie habitat is subject to woody species encroachment, gradually transitioning into shrub or woodland habitat. Periodic disturbance, such as fire or fall mowing, are necessary to maintain the open, high-light prairie habitats that Nelson's checker-mallow populations thrive in. In addition, resilient Nelson's checker-mallow populations need a sufficient number of individuals to withstand stochastic events and disturbances. The minimum viable population size for Nelson's checker-mallow is not identified. However, the recovery plan specifies that independent populations should number at least 200 individuals (Service 2010, p. IV–20), which provides a basis for evaluating population status.

For Nelson's checker-mallow to be considered viable, the species must be able to withstand catastrophic events and adapt to environmental changes. This can be achieved with a sufficient number of resilient populations distributed across its geographic range and representing the range of ecological settings in which the species is known to exist. The minimum number of populations required for Nelson's checker-mallow has not been determined. However, distribution and abundance goals laid out in the recovery plan (Service 2010, pp. IV–35–IV–36) and described under *Recovery Criteria,* above, provide a benchmark for evaluating the species.

Factors Influencing the Species

At the time of listing in 1993, the primary threats identified affecting Nelson's checker-mallow were urban and agricultural development, ecological succession that results in shrub and tree encroachment of open prairie habitats, and competition with invasive weeds. Planned construction and expansion of a reservoir on Walker Creek (a tributary to the Nestucca River) was identified as a future threat as associated inundation would result in the loss of many plants, including the largest population of the species known to exist at the time. The listing rule (58 FR 8235; February 12, 1993) also noted the potentially negative effects of overcollection for scientific and horticultural purposes, predation by weevils, and small population size. Some inadequacies in regulatory mechanisms were also identified. Subsequent to listing, climate change and hybridization were also identified as potential threats to the viability of Nelson's checker-mallow.

We considered all of these threats when considering whether the species continues to warrant protection under the Act. The threat of inundation never materialized; the proposed reservoir was not constructed, given that Walker Creek was designated as part of Oregon's State Scenic Waterway program in 1992, and as part of the National Wild and Scenic Rivers program in 2019 (Oregon Department of Parks and Recreation 2021, p. 1). These two designations make construction of a reservoir in this area unlikely at this time or in the future due to additional regulatory requirements. We previously determined that overcollection does not occur to such a degree that it has a population-level effect, and that regulatory mechanisms are adequately reducing the effects of threats that could act at a population scale (Service 2012, pp. 22–28). Weevil predation

occasionally impacts individual plants and may locally affect some populations; however, it is seasonal in nature and unpredictable. We did not find that weevil predation occurs at spatial and temporal scales large enough to affect the overall status of Nelson's checker-mallow given the plant's current population levels.

Many sites with small numbers of Nelson's checker-mallow remain distributed throughout the species' range. However, the number of populations with more than 1,000 plants has increased from 5 when the species was listed in 1993 to 24 populations in 2021 (see table 1, above; Service 2012, pp. 17–19; Service 2021, p. 18). Therefore, we conclude that small population size no longer puts the species at risk of extinction. The potential for hybridization among species of the same genus remains present. However, we found that the best available data indicate that hybridization does not pose a threat to the overall status of the species. Additional discussion of these threats is available in the recovery plan (Service 2010, pp. II–30–II–31 and chapter III), the 2012 5-year review (Service 2012, pp. 22–28), and in the 2021 SSA report (Service 2021, pp. 8–10).

The stressors identified as having population-level effects are habitat-related stressors and climate change. The loss, degradation, and fragmentation of prairie habitats have cascading effects that result in smaller population sizes, loss of genetic diversity, reduced gene flow among populations, destruction of population structure, and increased susceptibility to local population extirpation caused by environmental catastrophes (Service 2010, chapter III). Climate change acts primarily by altering habitat quality. Collectively, these stressors can contribute to reduced viability through reductions in resiliency, redundancy, and representation. The discussion below details the causes and consequences of these stressors on Nelson's checker-mallow.

Alteration of Natural and Human-Mediated Disturbance Processes

Change in community structure due to plant succession has been a serious long-term stressor to Nelson's checker-mallow. Habitats occupied by this species contain native grassland species, as well as numerous introduced taxa, and are prone to transition to a later seral stage of vegetative development. The natural transition of prairie to forest in the absence of disturbance such as fire can lead to the loss of Nelson's checker-mallow sites (Service 2012, p. 24). However, active management of habitat through mowing and prescribed burning is effective in reducing Nelson's checker-mallow's exposure to this stressor.

Habitat Conversion to Agricultural and Urban Use

Agricultural and urban development has modified and destroyed prairie habitats, resulting in fragmented, widely distributed patches (Service 2012, p. 24). Urban development in particular results in permanent loss of habitat and is of special concern where existing prairie habitat exists adjacent to urban areas (Service 2010, p. III–2). The greatest habitat losses due to land conversion are historical, although periodic additional losses of habitat on private lands may occur. Exposure of Nelson's checker-mallow populations to this stressor is mitigated by protections associated with public land ownership, conservation measures described later in this document, and State regulations requiring mitigation and restoration of degraded habitat (see *Conservation Efforts and Regulatory Mechanisms,* below).

Invasion by Nonnative Plants

Habitats occupied by Nelson's checker-mallow contain a mix of native and nonnative species. As described above, alteration of disturbance processes results in woody encroachment of prairie habitats. Nonnative woody species have been of particular concern, as they can rapidly proliferate and degrade open prairie sites (Service 2012, p. 24). In addition, nonnative, thatch-forming grasses may effectively limit recruitment (Institute for Applied Ecology (IAE) 2017, p. 1). Although invasion by nonnative plants remains a primary stressor to Nelson's checker-mallow populations, management practices including mowing, burning, and shrub removal are an effective approach to mediating these effects.

Climate Change

In the Pacific Northwest, temperature increases of 3 to 6 degrees Celsius (°C) (5.4 to 10.8 degrees Fahrenheit (°F)) are predicted by the end of the 21st century (Bachelet et al. 2011, p. 414). Although winter precipitation is predicted to increase, increased summer temperatures are expected to cause increased evapotranspiration, resulting in reduced growing season soil moisture (Bachelet et al. 2011, p. 414) and ultimately affecting prairie habitat quality. Detailed quantitative estimates of the effects of these conditions on Nelson's checker-mallow populations are not available. However, vulnerability assessments show the species to be moderately vulnerable to the effects of climate change (Steel et al. 2011, p. 9).

In order for the species to be resilient to changing environmental conditions and remain viable into the future, maintenance of large populations in heterogenous habitats across the range of the species is required (Service 2010, p. IV–6). Management activities that maintain open prairie habitats, including mowing, burning, and shrub removal, have resulted in an increase in the number of large populations throughout the range of the species. As described below, the majority of Nelson's checker-mallow sites are managed in accordance with conservation programs that ensure maintenance of prairie conditions and promote the existence of viable populations into the future.

Current Condition

We assessed the current condition of Nelson's checker-mallow by using the best available information to estimate resiliency, redundancy, and representation. We sourced data for this analysis primarily from the Threatened and Endangered Plant Geodatabase (version 12/31/2019), developed by IAE under a cooperative agreement with the Service for the purposes of tracking the status of species listed under the Act in the Willamette Valley. Additional data were compiled from supplementary reports (IAE 2019, entire), location-specific records, and other information in our files. We use the term ''site'' rather than ''population'' to refer to our analytical units throughout our current and future conditions analyses to avoid confusion; the recovery plan defines an independent population as one that contains more than 200 individual plants, but we evaluated sites of all sizes.

Resiliency

Resiliency, the ability of populations to withstand stochastic events, is commonly determined as a function of metrics such as population size, growth rate, or habitat quality and quantity. We evaluated the current resiliency of Nelson's checker-mallow sites on the basis of abundance, as well as measurable habitat characteristics that represent the habitat-related stressors discussed above. The four specific metrics we included in our assessment of resiliency (abundance, prairie habitat condition, site management, and site protection) are discussed in more detail below. A complete description of our analytical approach to current

conditions is available in the SSA report (Service 2021, pp. 19–22). Abundance was scored based upon the total number of plants within a site, based on the most recent surveys. Sites were scored as 1 (Low: fewer than 200 plants), 2 (Moderate: 200–1,999 plants), or 3 (High: equal to or more than 2,000 plants). These categorical thresholds correspond to recovery goals, which state that recovery targets may be achieved with a combination of at least 2 populations that number at least 2,000 individuals and sites with less than 200 plants are not considered independent populations.

Prairie habitat condition is a measure of overall habitat quality and was calculated using four distinct habitat metrics that are likely to influence population resiliency: percent woody cover, percent native cover, native plant richness (number of unique species present), and invasive plant cover. For each site where data on these criteria are available, we assigned a score of 1 (Poor), 2 (Fair), or 3 (Good) for each habitat metric. We then determined overall prairie habitat condition for each site by averaging individual habitat metric scores. Additional detail about scoring categories for each individual metric is available in the SSA report (Service 2021, pp. 19–22).

Site management reflects the potential for prairie habitat degradation due to natural succession in the absence of natural and anthropogenic disturbance regimes. Site management may also be influential in mediating the effects of climate change through the maintenance of large populations in heterogenous habitats distributed across the range of the species. To account for existing site management that serves to offset these stressors, we assigned each site a score of 1 (Poor: not managed for prairie conditions or unknown), 2 (Fair: generally managed for prairie conditions but no management plan in place), or 3 (Good: managed for prairie conditions with a management plan in place).

Site protection is a measure of the potential for losing Nelson's checker-mallow sites to agricultural and urban development. We used site ownership and the existence of conservation agreements to assess how well each site is protected from development, assigning each site a score of 1 (Poor: private ownership with no conservation easement or similar program), 2 (Fair: private ownership with conservation easement or similar program), or 3 (Good: public ownership or private conservation organization ownership).

To estimate resiliency for each site, we calculated a condition score by averaging the scores for abundance, mean prairie habitat condition, site management, and site protection. We weighted management twice as much as the other factors due to its relative importance to long-term population resiliency (Service 2010, p. IV–5; Service 2021, p. 21). Based on overall scores, current condition of each site was classified as high (score of greater than or equal to 2.5), moderate (score of 1.75–2.49), or low (score of less than 1.75).

Currently, we know of 66 sites containing Nelson's checker-mallow. Thirty-one of these sites (47 percent) are in high condition, while 29 of them (44 percent) are in moderate condition. Range-wide, only six sites (9 percent) are in low condition (Service 2021, pp. 21–26). If this analysis were limited to the 42 independent populations (having 200 plants or more), 31 populations (74 percent) would score as high condition, 7 populations (17 percent) would score as moderate condition, and 4 populations (9 percent) would score as low. These results demonstrate relatively high resiliency across the range of Nelson's checker-mallow.

Redundancy

Redundancy is defined as a species' ability to withstand catastrophic events and is determined as a function of the number of populations, as well as their distribution and connectivity. The historical distribution of Nelson's checker-mallow populations is largely unknown. Throughout its range, Nelson's checker-mallow is restricted to remnant prairie habitats that are highly fragmented due to a history of land conversion and natural succession following alterations to disturbance cycles. However, since the time of listing in 1993, habitat restoration, reintroductions, and habitat protection have collectively improved the status of the species. Among the 42 independent populations, more than 330,000 individual plants are distributed across 6 of the 7 recovery zones (Service 2021, pp. 15, 27), demonstrating overall good redundancy.

Representation

Representation refers to the ability of a species to adapt to change, and is based upon considerations of geographic, genetic, ecological, and niche diversity. Because we lack information about the genetic diversity of the species, we rely on geographical and ecological diversity in our assessment of representation. Populations (sites with 200 plants or more) of Nelson's checker-mallow are currently distributed in 6 of the 7 recovery zones and occur in both the Willamette Valley and in the Coast Range. The species occupies a range of prairie sites with various soil textures and moisture levels and occurs in a wide range of plant communities including meadows, marshes, wetlands, riparian/tree shrub forests, and disturbed areas. This indicates that the species has the capacity to adapt to a variety of environmental conditions and has good representation.

Future Viability

To assess the future viability of Nelson's checker-mallow, we considered the factors that will influence the species in the foreseeable future. We define the foreseeable future as 25 to 50 years. This interval was chosen because it encompasses the length of time over which we conclude we can make reliable predictions about the anticipated effect of climate change. In addition, this period of time is sufficient to observe population trends for the species, based on its life-history characteristics. It also captures the terms of many of the management plans and conservation easements that are in effect at Nelson's checker-mallow sites.

We determined that Nelson's checker-mallow will continue to be influenced by the factors that have historically influenced and are currently influencing the species, albeit at different relative rates into the future. Therefore, in our analysis of future viability, we considered habitat-related changes and climate change. We considered the specific sources of habitat loss, degradation, and fragmentation (alteration of natural and human-mediated disturbance processes, habitat conversion to agricultural and urban use, and invasion by nonnative plants) in light of ongoing conservation support, including habitat management and site protection.

We make several assumptions about ongoing conservation support in the foreseeable future. Support for the conservation of Nelson's checker-mallow has been high among government agencies, nongovernmental conservation organizations, and some private landowners. We assume that management of existing sites and priority recovery and management actions for the species will continue at approximately the current pace, and that the species will continue to benefit from this ongoing conservation support. We base this assumption on the number of Nelson's checker-mallow sites that have long-term or perpetual management agreements. These plans vary in scope and complexity across ownerships, but all provide at least a basic level of habitat management that

will benefit Nelson's checker-mallow. We expect adaptive management in response to changing conditions at sites with current plans, and efforts to develop new management plans at sites without plans. This is based on the commitment of the wide variety of conservation partners with whom we collaborate on similar prairie habitat conservation efforts. These partners typically tier their conservation efforts to the 2010 recovery plan that includes Nelson's checker-mallow with several other listed plants and insects, emphasizing restoration and maintenance of prairie habitat for the benefit of numerous species. This provides an impetus for continued formalized management of these sites and maintenance of Nelson's checker-mallow habitat.

Although sites not protected by virtue of ownership or conservation easement may be at risk due to development in the future, these sites are in the minority and their unprotected status is reflected in our analysis.

Resiliency

To assess the future viability of Nelson's checker-mallow, we considered a single scenario where we assumed that climate change will result in a dramatic reduction in abundance across the species' range but site management and protection will remain intact, as discussed above. We then reassessed population condition, applying the same methodology used for assessing current condition.

Published assessments do not provide detailed quantitative estimates of the effects of climate change on Nelson's checker-mallow populations. To evaluate the effects of climate change on individual sites, we characterized a worst-case future scenario in terms we could use in our analysis of future condition. In consultation with species experts and conservation partners, we defined the worst-case scenario as one where increased mortality and decreased recruitment culminate in a 50 percent reduction in abundance at all sites. We consider a 50 percent reduction to represent the upper boundary of plausibility as the actual effects of climate change on population sizes are likely to be more moderate based on climate change vulnerability assessment modeling (Steel et al. 2011, p. 30), and sites are expected to be protected and adaptively managed as described above. Nevertheless, assuming a 50 percent reduction provides a generous margin of error if these assumptions are violated. We acknowledge that a uniform response to climate change across the species' range is not likely, and that some populations may fare better than others under future conditions. However, this approach serves to demonstrate future viability under challenging future conditions.

In the scenario described above, resiliency declined modestly, with 60 sites remaining in high or moderate condition (see figure 1, below). The number of sites in high overall condition decreased from 31 to 25, relative to current condition, while the number of sites in moderate condition increased from 29 to 35. Sites reduced to moderate condition are relatively well-distributed throughout the range of the species, with one site occurring in the Coast Range recovery zone, three sites occurring in the Corvallis West recovery zone, one site occurring in the Portland recovery zone, and one site occurring in the Salem West recovery zone. The number of sites in overall low condition (six sites) does not change in the foreseeable future.

These changes in overall future condition are driven by changes in abundance. In our future scenario, 6 additional sites fall below 200 individual plants and, therefore, receive a low score for abundance. Sites with low abundance are more vulnerable to stochastic events and carry a higher risk for extirpation in the future. If we only consider sites that retain independent populations with 200 plants or more, the number of populations in high condition decrease from 31 to 27, the number in moderate condition remain at 7, and the number in low condition decrease from 4 to 2 for future overall condition. The relative importance of site management and protection in guarding against habitat loss and maintaining site resiliency even in sites with small numbers of plants is reflected in the relatively modest downward shift in overall future condition, relative to current condition (see figure 2, below).

Redundancy

Our analysis of future condition indicates that redundancy will be maintained in the foreseeable future; 66 extant sites will remain well-distributed throughout the current known range of the species. Consequently, no major changes in the species' ability to withstand catastrophes in the future is expected.

Representation

The distribution of extant Nelson's checker-mallow sites does not change under the parameters of our future condition analysis. Consequently, changes in ecological diversity are not projected to materialize as a result of climate change, and the species is likely to continue to occupy prairie habitat throughout its range and retain its adaptive capacity.

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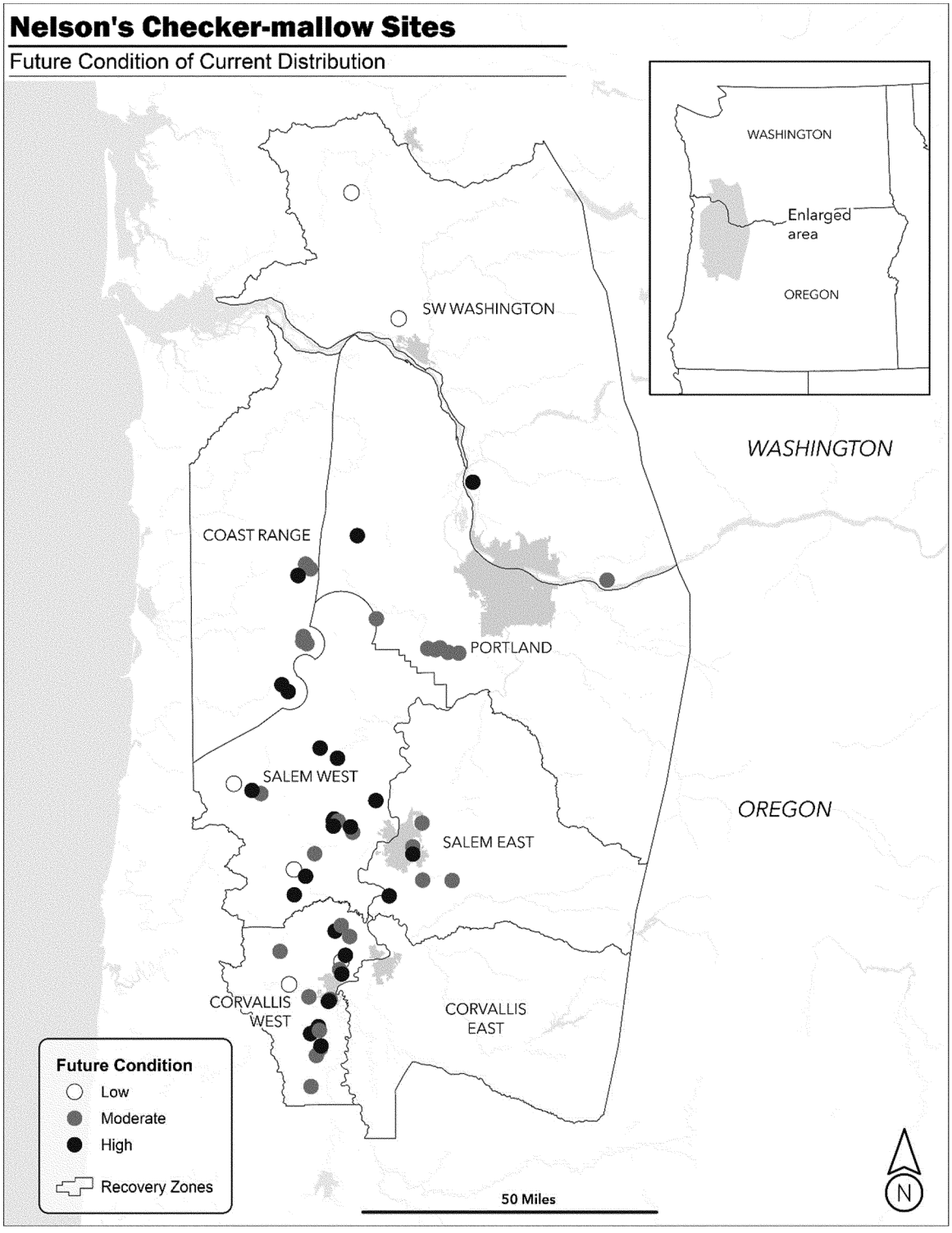

Figure 1. Overall future condition of all Nelson's checker-mallow sites.

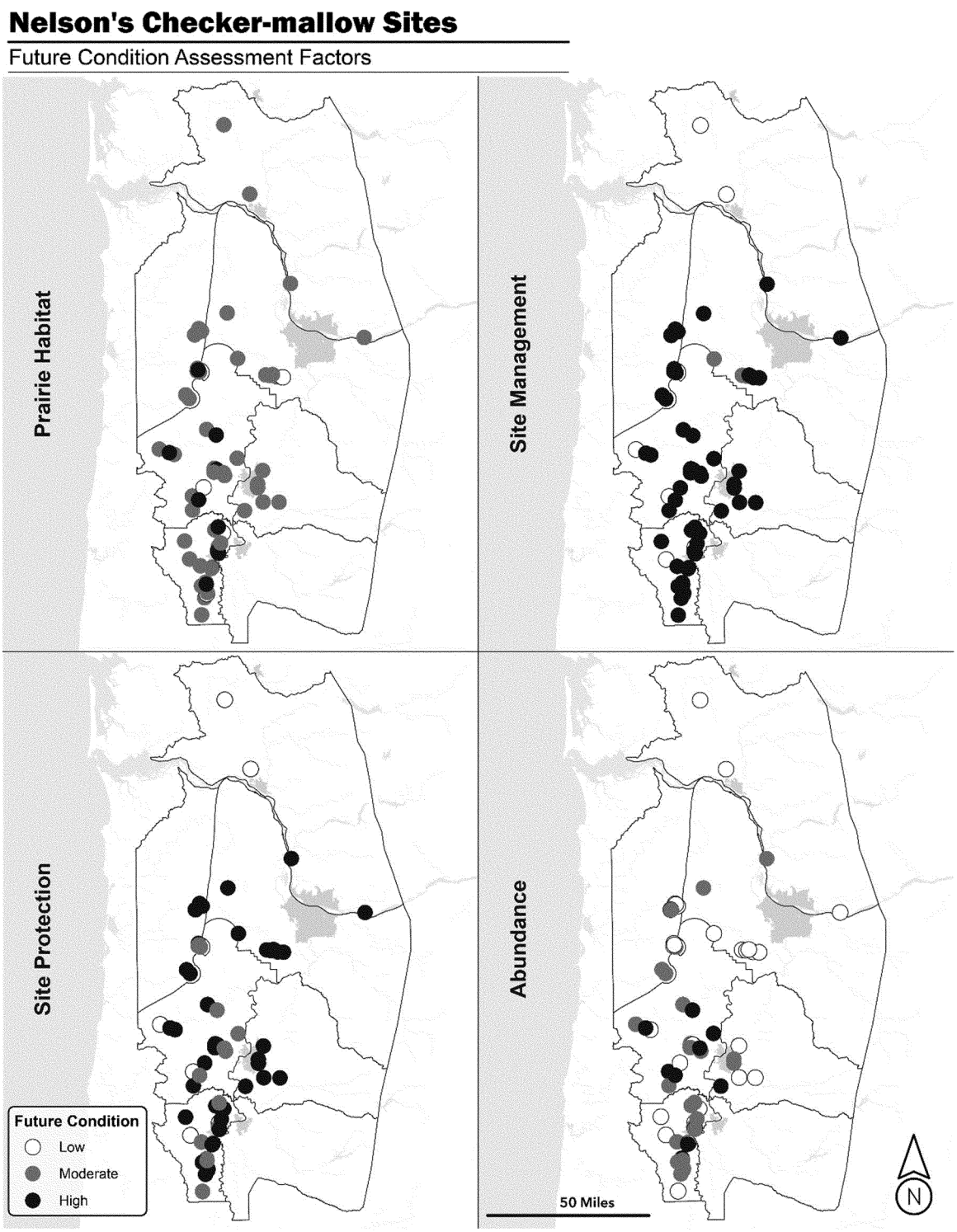

Figure 2. Future condition of Nelson's checker-mallow sites, by the individual assessment metrics: Area of prairie habitat, site management, site protection, and abundance.

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Collectively, our analysis of the resiliency, redundancy, and representation demonstrates that in 25 to 50 years, the viability of Nelson's checker-mallow will not be significantly reduced.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have analyzed the cumulative effects of identified threats and conservation actions on the species. To assess the current and future condition of the species, we evaluate the effects of all the relevant factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the

cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Conservation Efforts and Regulatory Mechanisms

Despite permanent habitat loss and modification, habitat restoration and protection projects have been implemented on both public and private lands throughout the range of Nelson's checker-mallow. These projects offset some of the permanent habitat losses and, as a result, Nelson's checker-mallow habitat is increasing (Bartow 2020, pers. comm.), particularly in the Corvallis West and Salem West recovery zones. The Wetland Reserve Program and other Farm Bill programs administered by the USDA's NRCS have been widely implemented in the Willamette Valley. Other programs, such as the Service's Partners for Fish and Wildlife program and the Act's section 10 programs (*i.e.,* safe harbor agreements and habitat conservation plans), are also available to landowners. These programs are focused on habitat restoration and protection and have contributed significantly to improving the status of Nelson's checker-mallow.

Range-wide, the majority of the 66 sites known to support Nelson's checker-mallow benefit from some type of conservation measure, by virtue of ownership or habitat management agreements or both. Fifty-seven of the 66 total Nelson's checker-mallow sites are managed in accordance with the conservation programs described above, which ensure maintenance of prairie conditions required by the species. Of these sites, 44 are owned by a public entity. Regarding the 42 independent populations (having 200 plants or more), 38 have formal management plans, 26 of which are in public ownership, which offers protection from prairie habitat conversion to other uses. The terms of management agreements vary, but they are typically valid for 10 to 30 years, with some extending into perpetuity. Collectively, these management regimes ensure habitat protections at a decades-long scale for most sites.

Determination of Nelson's Checker-Mallow's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the Act's definition of an endangered species or a threatened species. The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of endangered species or threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we found that the primary drivers of the status of Nelson's checker-mallow have been habitat loss, degradation, and fragmentation due to alteration of natural and human-mediated disturbance processes that maintain open prairie habitat, land conversion to agricultural and urban use, and invasion by nonnative plants (Factor A). The best available information indicates that, while still present to some degree, overcollection (Factor B), predation (Factor C), small population size (Factor E), and hybridization (Factor E) are no longer threats to the viability of the species.

Potential inundation of the largest and most vigorous population (Walker Flat) by reservoir development was seen as a major threat at the time of listing. The threat of inundation never materialized as the proposed reservoir was not constructed and is highly unlikely in the future due to the regulatory mechanisms (Factor D) discussed above. Other habitat threats (*i.e.,* alteration of disturbance processes and associated woody encroachment, the threat of invasive plants, land use conversion) are still present on the landscape; however, the magnitude and scope of these threats have decreased from historical levels, and have been offset by a variety of management and conservation measures in the 30 years since Nelson's checker-mallow was listed. Active maintenance of prairie habitat through mowing and prescribed burning has demonstrably reduced the threat posed by alteration of disturbance processes and associated woody encroachment (Factor A). The threat of invasive plants (Factor A) has also been significantly reduced as a result of active management.

Range-wide, 58 of the 66 sites known to contain Nelson's checker-mallow have formalized management plans. This number of formalized management plans is expected to remain relatively constant into the foreseeable future. Similarly, 60 Nelson's checker-mallow sites are either in public ownership, have been acquired by nongovernmental conservation organizations, or are enrolled in conservation easement programs (Factor D), which has substantially reduced the risk of habitat and population losses due to land-use conversion (Factor A). The number of sites protected from conversion to agricultural or urban use due to public or conservation organization ownership is expected to remain relatively constant in the future. In sum, despite the continued presence of habitat-related threats on the landscape, advances in site management and protection have led to a significant reduction in threats and overall improvement in the status of the species since listing.

When Nelson's checker-mallow was listed, we estimated that the species occurred at 48 sites, only 5 of which contained more than 1,000 individuals, and 30 percent of the known individuals of the species were threatened with inundation due to the planned construction of a dam. At the time of the SSA report, 334,968 individual plants were distributed across the historical range of the species. They occurred at 66 sites, 24 of which have at least 1,000 individuals, and inundation was no longer considered a likely threat. Our analysis of current conditions, based on abundance, habitat quality, site management, and site protection, shows that 60 of those sites are in either moderate or high condition, indicating relatively high resiliency. The sites are distributed among six of the seven recovery zones and occur in varied geographical and ecological settings, demonstrating overall high redundancy and representation. Recent surveys also show increasing trends in plant abundance across the species' range, with the total number of plants increasing to 426,032 in 2022 (Service 2022, pp. 2–3).

Subsequent to listing, climate change and its potential to negatively affect prairie habitat was identified as a potential threat to Nelson's checker-mallow. We considered the potential consequences of climate change on the species and evaluated a worst-case future scenario that included a 50 percent reduction in the size of all known populations across the range of the species in the next 25 to 50 years. Even with such severe population

reduction, the species retained appreciable levels of resiliency, redundancy, and representation, with only six sites showing a reduction in resiliency, and the maintenance of geographical and ecological distribution of the species.

We recognize that some habitat-related threats remain present, and they have ongoing impacts to Nelson's checker-mallow populations. We acknowledge that the specific effects of climate change on Nelson's checker-mallow and its habitat are uncertain and may have a negative impact. However, we found that current and expected patterns in site protection and habitat management (Factor D) are sufficient to prevent effects to the species such that it would meet the Act's definition of an endangered species or a threatened species. Thus, after assessing the best available information, we determine that Nelson's checker-mallow is not in danger of extinction now or likely to become so within the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so within the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity* v. *Everson,* 435 F. Supp. 3d 69 (D.D.C. 2020) (*Everson*), vacated the provision of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (Final Policy; 79 FR 37578; July 1, 2014) that provided if the Services determine that a species is threatened throughout all of its range, the Services will not analyze whether the species is endangered in a significant portion of its range.

Therefore, we proceed to evaluating whether the species is endangered or likely to become so within the foreseeable future in a significant portion of its range—that is, whether there is any portion of the species' range for which it is true that both (1) the portion is significant, and (2) the species is in danger of extinction now or likely to become so within the foreseeable future in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *Everson,* we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.,* endangered) or likely to become so within the foreseeable future (*i.e.,* threatened). In undertaking this analysis for Nelson's checker-mallow, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species may be endangered or threatened.

We evaluated the range of Nelson's checker-mallow to determine if the species is in danger of extinction now or likely to become so in the foreseeable future in any portion of its range. The range of a species can theoretically be divided into portions in an infinite number of ways. We focused our analysis on portions of the species' range that may meet the definition of an endangered or threatened species. For Nelson's checker-mallow, we considered whether the threats or their effects on the species are greater in any biologically meaningful portion of the species' range than in other portions such that the species is in danger of extinction now or likely to become so within the foreseeable future in that portion.

We examined the following threats: habitat loss, degradation, fragmentation due to alteration of natural and human-mediated disturbance processes that maintain open prairie habitat; land conversion to agricultural and urban use; invasion by nonnative plants; and climate change, including cumulative effects.

The threat of habitat loss from alteration of disturbance processes, land-use conversion, and invasion of nonnative plants has decreased in all portions of the species' range since the time of listing, largely due to land protection efforts and active habitat management. Although these residual threats influence the species variably across its range, there is no portion of the range where there is currently a concentration of threats at a biologically meaningful scale, relative to other areas of the range. In the foreseeable future, climate change may interact synergistically with other threats to negatively affect habitat quality. We acknowledge that uniform response across the species' range is not likely, and that some populations may fare worse than others under future conditions. However, the best available information does not indicate that any portion of the species' range will deteriorate disproportionately in the foreseeable future. We anticipate that any negative consequence of co-occurring threats will be successfully addressed through the same active management actions that have contributed to the ongoing recovery of Nelson's checker-mallow and that are expected to continue into the future.

We found no portion of the Nelson's checker-mallow range where the biological condition of the species differs from its condition elsewhere in its range such that the status of the species differs from its condition elsewhere in its range.

Therefore, no portion of the species' range provides a basis for determining that the species is in danger of extinction now or likely to become so within the foreseeable future in a significant portion of its range, and we determine that the species is not in danger of extinction now or likely to become so within the foreseeable future in any significant portion of its range. This does not conflict with the courts' holdings in *Desert Survivors* v. *U.S. Department of the Interior,* 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018), and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d 946, 959 (D. Ariz. 2017), because, in reaching this conclusion, we did not need to consider whether any portions are significant and, therefore, did not apply the aspects of the Final Policy's definition of ''significant'' that those court decisions held were invalid.

Determination of Status

Our review of the best available scientific and commercial information indicates that Nelson's checker-mallow does not meet the definition of an endangered species or a threatened species in accordance with sections 3(6) and 3(20) of the Act. In accordance with our regulations at 50 CFR 424.11(e)(2), because Nelson's checker-mallow does not meet the Act's definition of an endangered or a threatened species, we are removing Nelson's checker-mallow from the Federal List of Endangered and Threatened Plants.

Effects of This Rule

This final rule revises 50 CFR 17.12(h) by removing Nelson's checker-mallow from the Federal List of Endangered and Threatened Plants. The prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, will no longer apply to this species. Federal agencies will no longer be required to consult with the Service under section 7 of the Act in the event

that activities they authorize, fund, or carry out may affect Nelson's checker-mallow. There is no critical habitat designated for this species, so there is no effect to 50 CFR 17.96.

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a monitoring program for not less than 5 years for all species that have been delisted due to recovery. PDM refers to activities undertaken to verify that a species delisted due to recovery remains secure from the risk of extinction after the protections of the Act no longer apply. The primary goal of PDM is to monitor the species to ensure that its status does not deteriorate, and if a decline is detected, to take measures to halt the decline so that proposing it as endangered or threatened is not again needed. If at any time during the monitoring period data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing.

We are delisting Nelson's checker-mallow due to recovery based on our analysis in the SSA report, expert opinions, and conservation actions taken. We have prepared a PDM plan that discusses the current status of the taxon and describes the methods for monitoring its status. The PDM plan: (1) summarizes the status of Nelson's checker-mallow at the time of delisting; (2) describes frequency and duration of monitoring; (3) discusses monitoring methods and sampling regimes; (4) defines what triggers will be evaluated to address the need for additional monitoring; (5) outlines reporting requirements and procedures; (6) provides a schedule for implementing the PDM plan; and (7) defines responsibilities. It is our intent to work with our partners towards maintaining the recovered status of Nelson's checker-mallow. To view a copy of the PDM plan, see **ADDRESSES**, above.

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with determining a species' listing status under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. In accordance with Secretary's Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. Several Nelson's checker-mallow sites occur on Confederated Tribe of Grand Ronde (Tribe) lands, and some sites may lie within the usual and accustomed places for Tribal collection and gathering of resources. The Tribe has a plan in place to manage and monitor Nelson's checker-mallow and a new memorandum of understanding with the Service for data sharing.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Service's Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Oregon Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

§ 17.12 [Amended]

■ 2. In § 17.12, in paragraph (h), amend the List of Endangered and Threatened Plants by removing the entry for ''*Sidalcea nelsoniana*'' under FLOWERING PLANTS.

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–22759 Filed 10–16–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 230316–0077; RTID 0648–XD421]

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Adjustment to the 2023 Specifications

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

ACTION: Temporary rule; inseason adjustment.

SUMMARY: NMFS is adjusting the 2023 Atlantic herring specifications for the remainder of 2023. Herring regulations specify that NMFS will subtract 1,000 metric tons (mt) from the management uncertainty buffer and reallocate it to the herring annual catch limit and Area 1A sub-annual catch limit if NMFS determines that the New Brunswick weir fishery landed less than 2,722 mt of herring through October 1.

DATES: Effective October 12, 2023 through December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Maria Fenton, Fishery Management Specialist, 978–281–9196.

SUPPLEMENTARY INFORMATION: NMFS published final 2023 specifications for the Atlantic herring fishery on March 23, 2023 (88 FR 17397), establishing the 2023 annual catch limit (ACL) and management area sub-ACLs. The regulations at 50 CFR 648.201(h) specify that NMFS will subtract 1,000 mt from the management uncertainty buffer and reallocate it to the herring ACL and Area

1A sub-ACL if NMFS determines that the New Brunswick weir fishery landed less than 2,722 mt of herring through October 1. When such an adjustment is made, the regulations at § 648.201(h) state that NMFS will notify the New England Fishery Management Council and publish the adjustment in the **Federal Register**.

Data from Canada's Department of Fisheries and Oceans indicate that the New Brunswick weir fishery landed 525 mt of herring through October 1, 2023. Based on this catch information and NMFS' analysis of recent catch performance data, the best available information indicates that the New Brunswick weir fishery landed less than 2,722 mt of herring through October 1, 2023, and NFMS is implementing an inseason adjustment to the 2023 herring fishery specifications. Effective upon notice filing in the **Federal Register**, the management uncertainty buffer will decrease from 4,220 mt to 3,220 mt, the ACL will increase from 12,287 mt to 13,287 mt, and the Area 1A sub-ACL will increase from 3,345 mt to 4,345 mt for the remainder of 2023 (Table 1).

TABLE 1—ATLANTIC HERRING SPECIFICATIONS FOR 2023

	Current specifications (mt)	Adjusted specifications (mt)
Overfishing Limit	29,138	29,138
Acceptable Biological Catch	16,649	16,649
Management Uncertainty	4,220	3,220
Optimum Yield/ACL	12,287	13,287
Domestic Annual Harvest	12,429	13,429
Border Transfer	0	0
Domestic Annual Processing	12,429	13,429
U.S. At-Sea Processing	0	0
Area 1A Sub-ACL (28.9 percent)	3,345	4,345
Area 1B Sub-ACL (4.3 percent)	555	555
Area 2 Sub-ACL (27.8 percent)	3,589	3,589
Area 3 Sub-ACL (39 percent)	4,806	4,806
Fixed Gear Set-Aside	30	30
Research Set-Aside (RSA)	0%	0%

Once this temporary rule takes effect, NMFS will use the adjusted specifications for the remainder of 2023 when evaluating whether NMFS needs to implement a possession limit adjustment for Area 1A or for the whole fishery. The regulations at § 648.201(a)(1)(i)(A) specify that NMFS shall implement a 2,000-pound (lb) (907.2-kilogram (kg)) possession limit for herring for Area 1A beginning on the date that catch is projected to reach 92 percent of the sub-ACL for that area. The regulations at § 648.201(a)(1)(ii) specify that NMFS shall close the herring fishery and implement a 2,000-lb (907.2-kg) possession limit for herring beginning on the date that catch is projected to reach 95 percent of the ACL.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is in accordance with 50 CFR part 648, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment on this inseason adjustment because it would be unnecessary and contrary to the public interest. This inseason adjustment reallocates a portion of the management uncertainty buffer to the herring ACL and Area 1A sub-ACL for the remainder of the calendar year pursuant to a previously published regulation that provides notice of this annual potential adjustment and does not include discretionary implementation. Further, this reallocation process was the subject of prior notice and comment rulemaking. The inseason adjustment is routine and formulaic, specified in the regulations, and is expected by industry. The potential to reallocate the management uncertainty buffer was also outlined in the 2023 herring specifications that were published March 23, 2023 (88 FR 17397), which were developed through public notice and comment. Further, this inseason adjustment provides additional economic opportunity for the herring fleet. If implementation of this action is delayed to solicit public comment, the objective of the fishery management plan to achieve optimum yield in the fishery could be compromised. Deteriorating weather conditions during the latter part of the fishing year may reduce fishing effort, and could also prevent the ACL from being fully harvested. This would result in a negative economic impact on vessels permitted to fish in this fishery. Based on these considerations, NMFS further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period.

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

Dated: October 11, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–22875 Filed 10–12–23; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 199
Tuesday, October 17, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1995; Project Identifier MCAI–2023–00905–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 certain Airbus SAS Model A318, A319, A320, and A321 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 December 1, 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–2023–1995; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material that is proposed for IBR in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2023–1995.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 817–222–5102; email *timothy.p.dowling@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1995; Project Identifier MCAI–2023–00905–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 817–222–5102; email *timothy.p.dowling@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2023–0151, dated July 25, 2023 (EASA AD 2023–0151) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS A318–111, A318–112, A318–121, A318–122, A319–111, A319–112, A319–113, A319–114, A319–115, A319–131, A319–132, A319–133, A319–151N, A319–153N, A319–171N, A320–211, A320–212, A320–214, A320–215, A320–216, A320–231, A320–232, A320–233, A320–251N, A320–252N, A320–253N, A320–271N, A320–272N, A320–273N, A321–111, A321–112, A321–131, A321–211, A321–212, A321–213, A321–231, A321–232, A321–251N, A321–251NX, A321–252N, A321–252NX, A321–253N, A321–253NX, A321–271N, A321–271NX, A321–272N, and A321–272NX airplanes. Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD

therefore does not include those airplanes in the applicability. The MCAI states that new or more restrictive airworthiness limitations have been developed.

EASA AD 2023–0151 specifies that it requires a task (limitation) related to the center wing box front spar stiffeners already in Airbus A318/A319/A320/A321 ALS Part 2 DT–ALI Revision 09 or A318/A319/A320/A321 ALS Part 2 DT–ALI Revision 09 Variation 9.2 that are required by EASA AD 2022–0085 and EASA AD 2023–0008 respectively (which correspond to FAA AD 2023–13–10, Amendment 39–22495 (88 FR 50005, August 1, 2023) (AD 2023–13–10)), and that incorporation of EASA AD 2023–0151 invalidates (terminates) prior instructions for that task. This proposed AD therefore would terminate the limitations for tasks identified in the service information referenced in EASA AD 2023–0151 only, as required by paragraph (o) of AD 2023–13–10.

The FAA is proposing this AD to address fatigue cracking, accidental 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–2023–1995.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2023–0151, 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 2023–0151 described previously, as incorporated by reference. Any differences with EASA AD 2023–0151 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 2023–0151 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0151 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 2023–0151 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 2023–0151. Service information required by EASA AD 2023–0151 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2023–1995 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 AMOC 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 1,680 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–2023–1995; Project Identifier MCAI–2023–00905–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by December 1, 2023.

(b) Affected ADs

This AD affects AD 2023–13–10, Amendment 39–22495 (88 FR 50005, August 1, 2023) (AD 2023–13–10).

(c) Applicability

This AD applies to Airbus SAS airplanes specified in paragraphs (c)(1) through (4) of this AD, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before May 12, 2023.

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

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

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

(4) Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX 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, accidental 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 2023–0151, dated July 25, 2023 (EASA AD 2023–0151).

(h) Exceptions to EASA AD 2023–0151

(1) This AD does not adopt the requirements specified in paragraph (1) and (2) of EASA AD 2023–0151.

(2) Where paragraph (3) of EASA AD 2023–0151 specifies ''Within 12 months after the effective date of this AD, revise the approved AMP,'' this AD requires replacing those words with ''Within 90 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable.''

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2023–0151 is at the applicable ''associated thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2023–0151, 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 2023–0151.

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0151.

(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) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2023–0151.

(j) Terminating Action for Certain Tasks Required by AD 2023–13–10

Accomplishing the actions required by this AD terminates the corresponding requirements of AD 2023–13–10 for the tasks identified in the service information referenced in EASA AD 2023–0151 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 Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 817–222–5102; email *timothy.p.dowling@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 2023–0151, dated July 25, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0151, 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 October 4, 2023.

Victor Wicklund,

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

[FR Doc. 2023–22488 Filed 10–16–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. FAA–2023–2083; Notice No. 24–1]

RIN 2120–AL89

Robinson Helicopter R–22 and R–44 Special Training and Experience Requirements

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This rulemaking would revise the Special Federal Aviation Regulation (SFAR), Robinson R–22/44 Special Training and Experience Requirements, to provide consistency with other FAA regulatory requirements, training, and testing publications. The rulemaking would remove the low gravity (low G) dual flight instruction requirement to align the SFAR with current aircraft placard requirements and the limitations section of the Rotorcraft Flight Manual/Pilot Operating Handbook (RFM/POH) set forth by Airworthiness Directives (ADs). This proposed revision would also update the SFAR so it mirrors the terminology currently used in the Helicopter Flying Handbook and Practical Test Standards (PTS). This rulemaking proposes to clarify the awareness training endorsement and flight review requirements for less experienced pilots, remove legacy dates, and update the applicability section to include ground and flight training, including flight reviews provided by authorized flight instructors. Additionally, the FAA proposes to add an expiration date to the SFAR to allow the FAA time to review and refine the R–22 and R–44 requirements for ground training, aeronautical experience, including flight training, and flight reviews, before moving them to a permanent location in a separate subchapter.

DATES: Send comments on or before December 18, 2023.

ADDRESSES: Send comments identified by docket number FAA–2023–2083 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 (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.

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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Cara M. Barbera, Training and Certification Group, General Aviation and Commercial Division, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–1100; email *Cara.Barbera@faa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

A. Overview of Proposed Rule

Special Federal Aviation Regulation (SFAR) No. 73, found in part 61 of Title 14 of the Code of Federal Regulations (14 CFR), currently requires the effects of low G maneuvers and proper recovery procedures to be accomplished during dual instruction flight training. However, because of the inherent danger in performing low G maneuvers, Airworthiness Directives (ADs) 95–11–09[1] and 95–11–10,[2] effective July 14, 1995, prohibit intentionally inducing low G flight in Robinson model R–22 and R–44 helicopters. The FAA proposes to remove the requirement to perform low G maneuvers during flight training due to safety concerns and to continue addressing these hazards in the ground training topic for low G hazards, which is established in the SFAR.

The FAA proposes additional amendments to SFAR No. 73 to update and align its terminology with other FAA regulations and publications. Certain terminology in SFAR No. 73 has

[1] *See* AD 95–11–09, Robinson Helicopter Company Model R22 Helicopters (Jul. 14, 1995), *https://drs.faa.gov/browse/excelExternalWindow/AB0E6D73A5A548F186256A4D006126BD.0001.*

[2] *See* AD 95–11–10, Robinson Helicopter Company Model R44 Helicopters (Jul. 14, 1995), *https://drs.faa.gov/browse/excelExternalWindow/FED1D31B434F466E86256A4D00613579.0001.*

not been defined or used in the same context as found in the Helicopter Flying Handbook, Practical Test Standards, and 14 CFR part 61. Changing this terminology would not impact the requirements of SFAR No. 73 but would update the terms ''awareness,'' ''certified/certificated flight instructor,'' and ''blade stall'' for consistency with part 61 terms and definitions. Throughout this NPRM, ''awareness training'' will be referred to as ''ground training.'' In addition, the FAA proposes to replace the term ''enhanced'' with more specific language outlining what is necessary to satisfy autorotation training in an R–22 and/or R–44 helicopter. The terminology changes would not require updates to endorsements, websites, or other publications.

The FAA proposes to memorialize current ground training general subject area requirements to simplify the model applicability endorsement. It also would improve formatting to focus on the requirements for flight reviews specific to SFAR No. 73. Finally, this rulemaking proposes to align the applicability section in the SFAR with its other sections by including applicability to flight instructors who conduct ground training, flight training, or a flight review.

The FAA also proposes to add a five-year expiration date to SFAR No. 73. The addition of an expiration date would allow the FAA time to review and refine the requirements for R–22 and R–44 helicopters and move them to a permanent location in Title 14 of the Code of Federal Regulations, chapter 1.

The changes proposed by this rule would not impose any additional requirements to the current regulations, nor would they render current requirements less restrictive. Rather, the proposed changes are intended to more clearly identify the current requirements for persons seeking to manipulate the flight controls, act as pilot in command, provide ground training or flight training, or conduct a flight review in a Robinson model R–22 or R–44 helicopter that are unique to SFAR No. 73, and not otherwise included in part 61.

B. Summary of the Costs and Benefits

The FAA expects the proposal to promote safety without imposing costs by memorializing existing requirements, eliminating inconsistencies, and updating language. Thus, the FAA has determined that the proposal would have minimal economic effects and pose no novel or legal policy issues. Therefore, the FAA has determined that this proposal is not ''significant'' as defined in section 3(f) of Executive Order 12866 and is not ''significant'' as defined by DOT's Regulatory Policies and Procedures.

II. Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes the scope of the FAA's authority.

The FAA is proposing this rulemaking under the authority described in Subtitle VII, Part A, Subpart iii, section 44701, General Requirements. Under these sections, the FAA prescribes regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This rulemaking proposal is within the scope of that authority.

III. Background

A. SFAR 73 Final Rule Background Information

Title 14 CFR part 61 details the certification requirements for pilots, flight instructors, and ground instructors. Subparts C through G of part 61 contain training requirements for applicants seeking rotorcraft category helicopter class ratings. These requirements do not address specific types or models of rotorcraft. However, in 1995, the FAA determined that specific training and experience requirements were necessary for the safe operation of Robinson model R–22 and R–44 model helicopters.[3] [4]

The R–22 helicopter is a two-seat, reciprocating engine powered helicopter that is frequently used in initial student pilot training. The R–22 is one of the smallest helicopters in its class and incorporates a unique cyclic control and teetering rotor system. The R–44 is a four-seat helicopter with operating characteristics and design features that are similar to the R–22. Certain aerodynamic and design features of these aircraft result in specific flight characteristics that require particular pilot knowledge and responsiveness in order to be operated safely.[5]

As explained in the 1995 final rule, the FAA found the R–22 met 14 CFR part 27 certification requirements and issued a type certificate to Robinson in 1979. However, the R–22 had a high number of fatal accidents due to main rotor/airframe contact when compared to other piston powered helicopters. Many of those accidents were attributed to pilot performance or inexperience, where low rotor revolutions per minute (RPM) or low ''G'' conditions caused mast bumping or main rotor-airframe contact accidents.

In its analysis of accident data, the FAA found that pilots rated to fly the helicopter were not properly prepared to safely operate the R–22 and R–44 helicopters in certain flight conditions. The FAA determined that additional specific pilot training was necessary for safe operation of these helicopters as part of a comprehensive program that responded to a high number of accidents. Other elements of this program included addressing design and operational issues, cited by the National Transportation Safety Board (NTSB), that may have been contributing factors in some of the accidents. Furthermore, at that time, the R–44 had been recently certified, and the FAA was concerned that the R–44 would experience the same frequency of accidents because of the similar design. Accordingly, the FAA issued SFAR No. 73, which, in addition to addressing pilot training, also included requirements for flight instructors and continued flight reviews in the specific model to be flown.[6]

In 2021, the FAA formed a Safety Risk Management (SRM) Team to perform a safety risk assessment of SFAR No. 73. The SRM Team included representatives from the FAA, Helicopter Association International (HAI), Robinson Helicopter Company, and two Designated Pilot Examiners (DPEs). Between November 16–18, 2021, and on January 19, 2022, the SRM Team met to analyze hazards associated with operating and training pursuant to SFAR No. 73 and determine whether the SFAR effectively controls risk or is no longer needed.

Subject matter experts from the FAA and industry were invited to provide their input. After the SRM Team meeting concluded, Robinson Helicopter Company provided specific opinions and background material. The SRM Team's analysis resulted in recommended modifications of SFAR No. 73 that are reflected in this proposed rule. A copy of the full SRM Team Safety Risk Assessment Report for

[3] See Robinson R–22/R–44 Special Training and Experience Requirements, 60 FR 11254 (March 27, 1995).

[4] The Mitsubishi MU–2B is another example of an instance where the FAA initially created an SFAR and later codified regulations specific to an aircraft to ensure safe operation. Similarly, the conflicts between SFAR No. 108 and FAA guidance prompted the FAA to codify regulations related to the Mitsubishi MU–2B. See 81 FR 61584.

[5] See 60 FR 11254.

[6] See 60 FR 11254.

SFAR No. 73 is posted to the docket for this rulemaking.

Since SFAR No. 73 was published, Robinson model R–22 and R–44 helicopters have continued to operate throughout the world. Although other international civil aviation authorities have taken different approaches to implementing pilot certification standards, the manufacturer of these helicopters makes advisory material available to all operators worldwide.[7] Safety notices, available both in the Pilot's Operating Handbook/Rotorcraft Flight Manual (POH/RFM)[8] and on the Robinson Helicopter Company website, emphasize subject matter found in SFAR No. 73. Although these notices are not regulatory in nature, they provide guidance and recommended practices to owners of all Robinson helicopters. In addition, the manufacturer produces publications, including safety alerts, which are also located on the Robinson Helicopter Company website. The FAA anticipates the international aviation community will be interested in the outcome of this rulemaking.

B. AD 95–11–09 (R–22) and AD 95–11–10 (R–44) Low G Cyclic Pushover Prohibition Background

SFAR No. 73 consists of ground and flight training requirements, including low G flight training.[9] However, shortly after issuance of this SFAR, the FAA prohibited intentionally inducing low G flight in R–22 and R–44 helicopters. This prohibition was published on July 14, 1995, in ADs 95–11–09 (R–22)[10] and 95–11–10 (R–44)[11] because of the inherent risk in performing those maneuvers. That action was prompted by FAA analysis of the manufacturer's data that indicated a low G cyclic pushover maneuver may result in mast-bumping on the Robinson model R–22 helicopters. If uncorrected, this condition could result in an in-flight main rotor separation or contact between the main rotor blades and the airframe of the helicopter and subsequent loss of control of the helicopter. The ADs require installation of placards in the helicopter and insertion of a prohibition against low G cyclic pushover maneuvers into the limitations section of the RFM.

C. Recommendation and Proposal

While accidents in the R–22 and R–44 helicopters have declined markedly since SFAR No. 73 was issued, the NTSB has recommended that the FAA should ensure that SFAR No. 73, the Flight Standards Board specifications, and the ADs applicable to the operation of the R–22 and R–44 are made permanent.[12] According to a special investigation report the NTSB issued on April 2, 1996, the special operating rules for flight instructors and students and low-experience and non-proficient pilots must continue in order to ensure the safe operation of the helicopter.

The inconsistency between the low G flight training requirement in SFAR No. 73 and the ADs' prohibition on intentionally inducing low G flight has led to confusion regarding the actual requirements for flight training in R–22 and R–44 helicopters. The FAA proposes to resolve that discrepancy by removing the requirement in SFAR No. 73 to perform low G maneuvers during flight training. The FAA also proposes to revise certain language in this SFAR by updating terminology to make it consistent across FAA regulations and guidance.

IV. Discussion of the Proposal

A. Removal of Required Flight Training on the Effects of Low G Maneuvers and Proper Recovery Procedures

Shortly after issuance of SFAR No. 73 in 1995, the FAA issued priority letters AD 95–11–09[13] and AD 95–11–10[14] in response to FAA analysis of the manufacturer's data that indicated a low G cyclic pushover maneuver may result in mast-bumping on the Robinson model R–22 and R–44 helicopters.[15] These ADs prohibited intentionally induced low G flight in R–22 (AD 95–11–09) and R–44 (AD 95–11–10) helicopters in an effort to prevent in-flight main rotor separation or contact between the main rotor blades and the airframe of the helicopter and subsequent loss of control of the helicopter. To provide immediate corrective action, the FAA issued these ADs by priority letters to all known U.S. owners and operators of Robinson model R–22 and R–44 helicopters on May 25, 1995, and then published them in the **Federal Register** as an amendment to 14 CFR 39.13 to make the mandate applicable to all persons.[16]

Since their publication, these ADs have conflicted with SFAR No. 73, which requires dual instruction (flight training) on the effects of low G maneuvers and proper recovery procedures.[17] To resolve this conflict, the FAA proposes to remove the requirements for flight training on the effects of low G maneuvers and proper recovery procedures from paragraph 2(b) of SFAR No. 73. Specifically, the FAA proposes to remove paragraphs 2(b)(1)(ii)(D), 2(b)(2)(ii)(D), 2(b)(3)(iv), 2(b)(4)(iv), and 2(b)(5)(iii)(D) from the current regulation.

B. Moving Flight Training Topic of Low G Hazards to Ground Training Requirements

Although the FAA is proposing to remove the requirement for flight training on the effects of low G maneuvers and proper recovery procedures under paragraph 2(b) of SFAR No. 73, the FAA will continue to require knowledge-based training on low G as a general subject area under paragraph 2(a)(3). To enhance the quality of low G ground training provided under paragraph (a)(3)(iv) and emphasize the importance of understanding the risks, the FAA proposes to reconfigure the current flight training requirement on low G maneuvers and proper recovery procedures as a ground training requirement in paragraph 2(a)(3)(iv). Specifically, the FAA proposes to replace the term ''Low G hazards'' in the ground training requirements in paragraph 2(a)(3)(iv) with the term ''Low G conditions, effects, and proper recovery procedures.'' This proposal would resolve the conflict with the airworthiness requirements for the aircraft while continuing to underscore

[7] See Robinson Helicopter Company Safety Notices, *https://robinsonheli.com/robinson-safety-notices/*.

[8] See Robinson Helicopter Company POH/FRM *https://robinsonheli.com/current-status/*.

[9] See 14 CFR part 61 Special Federal Aviation Regulation No. 73—Robinson R–22/R–44 Special Training and Experience Requirements.

[10] See AD 95–11–09, Robinson Helicopter Company Model R22 Helicopters (Jul. 14, 1995), *https://drs.faa.gov/browse/excelExternalWindow/AB0E6D73A5A548F186256A4D006126BD.0001*.

[11] See AD 95–11–10, Robinson Helicopter Company Model R44 Helicopters (Jul. 14, 1995), *https://drs.faa.gov/browse/excelExternalWindow/FED1D31B434F466E86256A4D00613579.0001*.

[12] See National Transportation Safety Board, Special Investigation Report, Robinson Helicopter Company R22 Loss of Main Rotor Control Accidents, Adopted April 2, 1996, *https://www.ntsb.gov/safety/safety-studies/Documents/SIR9603.pdf*.

[13] See AD 95–11–09, Robinson Helicopter Company Model R22 Helicopters (Jul. 14, 1995), *https://drs.faa.gov/browse/excelExternalWindow/AB0E6D73A5A548F186256A4D006126BD.0001*.

[14] See AD 95–11–10, Robinson Helicopter Company Model R44 Helicopters (Jul. 14, 1995), *https://drs.faa.gov/browse/excelExternalWindow/FED1D31B434F466E86256A4D00613579.0001*.

[15] [Title] 60 FR 33686, (Jun. 29, 1995), Docket No. 95–SW–24–AD.

[16] See R–22 Docket No. 95–SW–24–AD; Amendment 39–9299; AD 95–11–09 and R–44 Docket No. 95–SW–25–AD; Amendment 39–9300; AD 95–11–10, *https://www.govinfo.gov/content/pkg/FR-1995-06-29/pdf/FR-1995-06-29.pdf*.

[17] In essence, the ADs and RFM contradict the requirements in the SFAR, creating confusion and an inability to comply with both requirements. Flight instructors and flight schools adhere to the AD and RFM limitations and do not conduct SFAR 73 low-G flight training.

the importance of a pilot's understanding of low G-related hazards when operating an R–22 or R–44 helicopter. This more specific and comprehensive classroom coverage of the subject would educate pilots about the situations and conditions that lead to low G, the aerodynamic impact it has on the aircraft, and the proper way to recover to prevent an accident.

The FAA proposes changes to the existing ground training requirements, which would align SFAR No. 73 with existing FAA publications that address low G hazards. For example, the Helicopter Flying Handbook (HFH) highlights the importance of low G recognition and recovery procedures but also discusses the risk of low G flight operations, stating that low G mast bumping has been the cause of numerous military and civilian fatal accidents.[18] The HFH details the safety consequences of low G conditions, which further emphasizes the hazards of low G in flight and the importance of addressing these topics through ground training.

Furthermore, the helicopter testing standard for airman certificates and ratings addresses knowledge elements related to low G, understanding and recognizing those conditions, and explaining the proper recovery procedure.[19] This change to the regulations would ensure consistency with those testing standards.

C. Awareness Training Renamed as Ground Training

SFAR No. 73 distinguishes ground training requirements from aeronautical experience [20] requirements. This ground training, currently titled ''awareness training,'' is provided by an authorized instructor as part of the comprehensive program to help prevent accidents in Robinson R–22 and R–44 helicopters. The FAA has found that there is a need for all pilots operating these helicopters to be aware of certain characteristics associated with Robinson R–22 and R–44 helicopters. Awareness training requirements and the associated ground topics are detailed in SFAR No. 73, paragraph 2(a).[21] Ground training, as defined by 14 CFR 61.1(b), ''means that training, other than flight training, received from an authorized instructor.'' On the other hand, the term ''awareness training'' does not have a corresponding definition. Therefore, the FAA proposes to change the title ''Awareness Training'' to ''Ground Training.'' This proposed change would align the regulatory language throughout part 61 and provide clarity in differentiating the ground training section from the aeronautical experience requirements of SFAR No. 73. The FAA thereafter would interpret endorsements, websites, or other publications and documents that currently use the term ''awareness training'' as synonymous with the term ''ground training,'' as defined in 14 CFR 61.1(b). Adopting this interpretation would eliminate any requirement to amend previously issued endorsements or make immediate changes to current industry and FAA publications and documents. The FAA recommends that, if the rule change becomes final, the terminology used in industry documents or websites that utilize SFAR No. 73 (effective on June 29, 2009) be updated during a normally scheduled revision process or a planned revision rather than as an unscheduled change immediately following the adoption of any final rule associated with this notice of proposed rulemaking.

D. Flight Review Requirements for Pilots With Less Experience in R–22/R–44

Under § 61.56, no person may act as PIC of an aircraft unless, within the preceding 24 months, the person has completed a flight review in an aircraft for which that pilot is rated.[22] Under 2(c)(1) of SFAR No. 73, to continue acting as PIC of an R–22 after initially completing the SFAR training requirements, a person must complete the flight review in an R–22.[23] A separate flight review is required for the R–44 under 2(c)(2). The flight review must include the awareness training and the flight training in SFAR No. 73 as set forth in paragraph 2(c)(3). Pilots who do not meet a threshold experience level in the R–22 or R–44 (*i.e.,* those with less than 200 flight hours in helicopters and at least 50 hours in the model of Robinson helicopters) are required to complete an annual flight review to continue to act as PIC of the respective model of helicopter. The purpose of these provisions is to ensure persons operating Robinson R–22 and R–44 maintain proficiency and competency over time.

The flight review requirements for less experienced pilots are identified in paragraphs 2(b)(1)(ii) and 2(b)(2)(ii) and grouped together in the same paragraph that describes the general pilot-in-command flight training. This annual flight review requirement is not set forth as an individual condition in a way that calls attention to its necessity. Furthermore, these flight review requirements do not specify within the paragraphs what subjects this group of pilots must accomplish to satisfy the ground training portion of the flight review. To resolve these issues, the FAA proposes moving the annual flight review requirements located in 2(b)(1)(ii) and 2(b)(2)(ii) for that specified group of pilots to separate paragraphs—2(b)(1)(iii) and 2(b)(2)(iii)—within the same section. This change will not impact the flight review requirements outlined in 2(c), as appropriate. This new paragraph would also identify the general subject areas from the awareness training as the required ground training and the associated abnormal and emergency procedures for the Robinson R–22 or R–44 helicopter, as appropriate. This proposed change would increase awareness of the annual flight review requirements and reduce the likelihood of pilots overlooking this requirement.

E. Enhanced Training in Autorotation Procedures

A pilot who seeks to manipulate the flight controls of a Robinson R–22 or R–44 helicopter must meet the applicable flight training requirements set forth in SFAR 73, paragraph 2(b), including enhanced training in autorotation procedures.[24] The term ''enhanced'' is

[18] See FAA–H–8083–21B, Helicopter Flying Handbook, published 2019; *https://www.faa.gov/regulations_policies/handbooks_manuals/aviation/helicopter_flying_handbook.*

[19] Some PTSs may transition to Airman Certification Standards (ACS) to be utilized as practical test testing standard for airman certificates and ratings. The FAA published a Notice of Proposed Rulemaking (NPRM) which proposes to incorporate these Airman Certification Standards and Practical Test Standards by reference into the certification requirements for pilots, flight instructors, flight engineers, aircraft dispatchers, and parachute riggers. See Airman Certification Standards and Practical Test Standards for Airmen; Incorporation by Reference, 87 FR 75955 (Monday, Dec. 12).

[20] Section 61.1 defines aeronautical experience as ''pilot time obtained in an aircraft, flight simulator, or flight training device for meeting the appropriate training and flight time requirements for an airman certificate, rating, flight review, or recency of flight experience requirements of this part.'' As such, aeronautical experience includes flight training.

[21] Currently, SFAR No. 73 awareness training requires instruction in the general subject areas of energy management, mast bumping, low rotor RPM (blade stall), low G hazards; and rotor RPM decay.

[22] A flight review consists of one hour of ground training and one hour of flight training on general operating and flight rules of part 91 and those maneuvers and procedures that, at the discretion of the person giving the flight review, are necessary for the pilot to demonstrate the safe exercise of the privileges of the pilot certificate. 14 CFR 61.56(a).

[23] By completing a flight review in an R–22, a person would be current to act as PIC of an R–22 and would satisfy the flight review requirements for any other helicopter (except for the R–44). By contrast, a pilot who completes a flight review in a helicopter other than the R–22 would be ineligible to act as PIC of the R–22.

[24] Subsequent to issuance of SFAR 73, industry-standard training has emphasized autorotation training to maneuver the aircraft that avoids

not defined in part 61. In the context of the SFAR, the FAA interprets the term ''enhanced'' to mean different autorotation iterations. On its face, however, the term lacks sufficient specificity to adequately inform the regulated community what autorotation maneuvers are expected to be performed. As such, the proposed change would remove the term ''enhanced'' in SFAR No. 73, paragraphs 2(b)(1)(ii), 2(b)(2)(ii), 2(b)(3), 2(b)(4), and 2(b)(5)(iii) and replace it with language specifying that the training must include autorotation procedures and energy management, including utilizing a combination of flight control inputs and maneuvering to prevent overshooting or undershooting the selected landing area from an entry altitude that permits safe recovery. Revising the terminology would provide a better understanding of the necessary flight control inputs to achieve the desired airspeed, rotor RPM, and autorotation performance and improve pilot proficiency with the Robinson R–22 and R–44 helicopter.

In addition, the FAA also proposes to add specificity in 2(b)(1)(ii)(B) and 2(b)(2)(ii)(B) in place of the term ''enhanced'' training in autorotation procedures to include autorotation training in the maximum glide configuration for the R–22 and both the minimum rate of descent and maximum glide configuration for the R–44.[25] The R–22 training would differ slightly because the RFM/POH does not provide information for airspeed and main rotor revolutions per minute to perform an autorotation minimum rate of descent configuration, whereas the R–44 flight manual establishes those flight parameters.

The proposed changes would more clearly establish the expectations for the autorotation portion of the flight training requirements to receive an endorsement to act as pilot in command, solo, conduct a flight review, or provide flight instruction in a Robinson R–22 and R–44. These autorotation procedures would align with the Helicopter Flying Handbook (HFH) and RFM/POH.

F. Removal of Legacy Dates

SFAR No. 73 contains three long-expired compliance dates for ground training in paragraphs 2(a)(1), 2(a)(2), and 2(a)(4). Since the ground training requirements outlined in these paragraphs now apply to all pilots and operators of R–22 and R–44 helicopters, the FAA proposes to remove those expired dates that are no longer applicable.

G. Add Persons Who Seek To Provide Ground Training or Flight Training or Conduct a Flight Review to Applicability Section

The FAA also proposes to amend the applicability section of SFAR No. 73 (Section 1) to include persons who provide ground or flight training or conduct a flight review in R–22 or R–44 helicopters. While paragraph 2(b)(5) contains requirements for persons who provide flight training or conduct a flight review, the Applicability section of SFAR No. 73 does not identify authorized flight instructors as persons to whom the rule applies. For the purposes of clarity and consistency, the FAA, therefore, proposes to modify Section 1 by adding persons who seek to provide ground training or flight training or conduct a flight review in a Robinson model R–22 or R–44 helicopter.

H. Revise Term Blade Stall

Low rotor RPM (blade stall) is identified as a ground training topic in SFAR No. 73, paragraph 2(a)(3)(iii). This ground training topic places blade stall in parentheticals. This formatting leads the reader to believe that low rotor RPM and blade stall are synonymous. However, they are different topics; low RPM is the onset of the emergency, and stall is the state at which the aircraft becomes unrecoverable. Low rotor RPM is recoverable if identified early and immediately corrected. If this flight condition is not rectified and the rotor RPM continues to trend lower, blade stall may occur. Blade stall is a fatal condition where the rotor RPM is not recoverable.

Furthermore, the term blade stall can be confused with retreating blade stall, which occurs at high forward speeds and has its own unique emergency/hazard situation. Rotor stall can occur at any airspeed, and the rotor quickly stops producing enough lift to support the helicopter, causing it to lose lift and descend rapidly.

Changing the term blade stall to rotor stall would more accurately capture a consequence of low rotor RPM. Removing the parentheticals and labeling this ground topic as low rotor RPM and rotor stall would also better align SFAR No. 73 terminology with the HFH. As the terms are not synonymous and ground training currently must cover each independent topic, this proposed change is not substantive and would not expand the requirements set forth in SFAR No. 73.

I. Revise Term Certified and Certificated for Flight Instructors

This NPRM proposes to remove ''certified'' and ''certificated'' from areas in this SFAR that reference flight instructors to align with part 61 definition of flight instructor and provide consistency. This SFAR would instead use the term ''flight instructor'' and identify the authorization requirement established in SFAR No. 73, paragraph 2(b)(5)(iv) where appropriate throughout the SFAR. The flight instructor requirements outlined in SFAR No. 73, paragraph 2(b)(5) establish the aeronautical experience, training requirements, and demonstration of skills to receive authorization to perform ground and flight training identified in this rule. This authorization is documented by the issuance of an endorsement from an FAA aviation safety inspector or authorized designated pilot examiner.

J. R–22/R–44 Awareness Training Endorsement

Flight instructors and pilots have misinterpreted the ground training endorsement identified in SFAR No. 73, paragraphs 2(a)(1) and 2(a)(2) to be aircraft make and model specific.[26] However, the ground training on the general subject areas listed in paragraph 2(a)(3) is given to increase awareness for the operation of both R–22 and R–44 models and is not unique to either model. They have the same subject content, technical detail, and recovery techniques for both the Robinson model R–22 and R–44 helicopters. A person would receive model specific training during the flight training listed in SFAR No. 73, paragraph 2(b), Aeronautical Experience. Because the ground training covers general subject areas, the endorsement may be written to cover both aircraft. The FAA proposes to add a new paragraph to paragraph (a) clarifying that the ground training endorsement is intended to cover both Robinson model R–22 and R–44 helicopters.[27]

overshooting or undershooting the selected landing area that is consistent with the specificity proposed in this rule. See Safety Risk Assessment Report for SFAR 73: Robinson R–22/R–44 Special Training and Experience Requirements (2022).

[25] See Safety Risk Assessment Report for SFAR 73: Robinson R–22/R–44 Special Training and Experience Requirements (2022).

[26] The FAA has received inquiries requesting clarification regarding SFAR No. 73 ground training endorsement and if it pertains to a specific Robinson model for training on general subject areas for the R–22 and R–44.

[27] The proposed addition would become new paragraph (a)(4), and existing (a)(4) governing endorsements for completing the manufacturer's safety course will be redesignated as paragraph (a)(5).

K. Add Expiration Date to SFAR No. 73

SFAR No. 73 became effective on June 29, 2009, and does not have an expiration date. The proposed revision would add a five-year expiration date that starts on the effective date of a final rule adopting this notice of proposed rulemaking. Adding an expiration date to this SFAR would provide a timeframe for an assessment of how to move its R–22 and R–44 requirements for ground training, aeronautical experience, flight training, and flight reviews to a permanent location in a subchapter of 14 CFR, chapter 1.

V. Regulatory Notices and Analyses

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

In conducting these analyses, the FAA has determined that this proposed rule: (1) will result in benefits that justify costs; (2) is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866; (3) is not ''significant'' as defined in DOT's Regulatory Policy and Procedures; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

A. Regulatory Impact Analysis

This proposal would remove a flight training requirement from SFAR No. 73 that cannot be currently performed in the aircraft because it is inconsistent with Airworthiness Directives (ADs) related to Robinson R–22 and R–44. It is current practice not to perform the flight training maneuver notwithstanding the regulatory requirement in the SFAR; therefore, the proposed change imposes no new cost. The FAA expects the proposal to promote safety without imposing costs by clarifying requirements, eliminating inconsistencies, and updating language.

The proposal is needed to resolve a contradiction between SFAR No. 73, which requires low G maneuvers during flight training for Robinson R–22 and R–44 helicopters, and subsequent ADs that prohibit low G cyclic pushover maneuvers in these aircraft. The FAA originally promulgated SFAR No. 73 in 1995 in response to a series of fatal accidents attributed to pilot inexperience resulting in main rotor and airframe contact. To address these safety concerns, SFAR No. 73 established special awareness training, aeronautical experience, endorsement, and flight review requirements for pilots operating Robinson R–22 and R–44 helicopters. However, within months, the FAA issued ADs requiring insertion of limitations in the rotorcraft flight manual and aircraft placards prohibiting low G cyclic pushover maneuvers. The proposal would remove the requirement for low G maneuvers during in-flight training from SFAR No. 73 while continuing ground training related to low G conditions and proper recovery procedures. The proposal would make other conforming changes to improve clarity and consistency without creating new information collections or requiring immediate changes to current industry or FAA publications and documents.

Based on this information, the FAA has determined that the proposal would have minimal economic effects and pose no novel or legal policy issues. Therefore, the FAA has determined that this proposal is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866 and is not ''significant'' as defined by DOT's Regulatory Policies and Procedures.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) and the Small Business Jobs Act of 2010 (Pub. L. 111–240,), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

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. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination with a reasoned explanation.

The FAA expects the proposal to have a minimal economic impact on small entities. The proposal applies most directly to providers of training for Robinson R22 and R44 helicopters. Some of these training providers are small entities. However, the proposal does not impose new burdens. The proposal would align SFAR No. 73 with current practice and Airworthiness Directives (ADs) related to Robinson R–22 and R–44 helicopter training requirements. Total training hours remain the same. The proposal would also update language and make other conforming changes to improve clarity and consistency regarding training for Robinson R–22 and R–44 helicopters without imposing new recordkeeping or other requirements.

If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, the FAA proposes to certify that the rule will not have a significant economic impact on a substantial number of small entities. The FAA welcomes comments on the basis of this certification.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign

commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this proposed rule and determined that the proposal responds to a domestic safety objective. The FAA has determined that this proposed rule is not considered an unnecessary obstacle to trade.

D. Unfunded Mandates Assessment

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

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there would be no new requirement for information collection associated with this proposed rule.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6f for regulations and involves no extraordinary circumstances.

VI. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government and, therefore, would not have federalism implications.

B. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Consistent with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,[28] and FAA Order 1210.20, American Indian and Alaska Native Tribal Consultation Policy and Procedures,[29] the FAA ensures that Federally Recognized Tribes (Tribes) are given the opportunity to provide meaningful and timely input regarding proposed Federal actions that have the potential to affect uniquely or significantly their respective Tribes. At this point, the FAA has not identified any unique or significant effects, environmental or otherwise, on tribes resulting from this proposed rule.

C. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. The FAA has determined that it would not be a ''significant energy action'' under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

[28] 65 FR 67249 (Nov. 6, 2000).

[29] FAA Order No. 1210.20 (Jan. 28, 2004), available at *http://www.faa.gov/documentLibrary/media/1210.pdf.*

D. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609 and has determined that this action would have no effect on international regulatory cooperation.

VII. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The FAA 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 submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

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 FAA may change this proposal in light of the comments it receives.

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.*

B. Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and

actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' 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 the person in the **FOR FURTHER INFORMATION CONTACT** section of this document. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

C. Electronic Access and Filing

A copy of this NPRM, all comments received, any final rule, and all background material may be viewed online at *https://www.regulations.gov* using the docket number listed above. A copy of this proposed rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *https://www.federalregister.gov* and the Government Publishing Office's website at *https://www.govinfo.gov.* A copy may also be found on the FAA's Regulations and Policies website at *https://www.faa.gov/regulations_policies.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed in the electronic docket for this rulemaking.

D. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit *https://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects in 14 CFR Part 61

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44703, 44707, 44709–44711, 44729, 44903, 45102–45103, 45301–45302.

■ 2. Revise Special Federal Aviation Regulation No. 73 to read as follows:

Special Federal Aviation Regulation No. 73—Robinson Helicopter Company, Robinson R–22/R–44 Special Training and Experience Requirements

Sections

1. *Applicability.* Under the procedures prescribed herein, this SFAR applies to all persons who seek to manipulate the controls, act as pilot in command, provide ground training or flight training, or conduct a flight review in a Robinson model R–22 or R–44 helicopter. The requirements stated in this SFAR are in addition to the current requirements of part 61.

2. *Required training, aeronautical experience, endorsements, and flight review.*

(a) *Ground Training:*

(1) Except as provided in paragraph 2(a)(2) of this SFAR, no person may manipulate the controls of a Robinson model R–22 or R–44 helicopter for the purpose of flight unless the ground training specified in paragraph 2(a)(3) of this SFAR is completed and the person's logbook has been endorsed by a flight instructor authorized under paragraph 2(b)(5)(iv) of this SFAR.

(2) A person who holds a rotorcraft category and helicopter class rating on that person's pilot certificate and meets the experience requirements of paragraph (b)(1) or paragraph 2(b)(2) of this SFAR may not manipulate the controls of a Robinson model R–22 or R–44 helicopter for the purpose of flight unless the ground training specified in paragraph 2(a)(3) of this SFAR is completed and the person's logbook has been endorsed by a flight instructor authorized under paragraph 2(b)(5)(iv) of this SFAR.

(3) Ground training must be conducted by a flight instructor who has been authorized under paragraph 2(b)(5)(iv) of this SFAR and consists of instruction in the following general subject areas:

(i) Energy management;

(ii) Mast bumping;

(iii) Low rotor RPM and rotor stall;

(iv) Low G conditions, effects, and proper recovery procedures; and

(v) Rotor RPM decay.

(4) The general subject areas identified in paragraph 2(a)(3) of this SFAR are intended to cover both Robinson model R–22 and R–44 helicopters.

(5) A person who can show satisfactory completion of the manufacturer's safety course may obtain an endorsement from an FAA aviation safety inspector in lieu of completing the ground training required by paragraphs 2(a)(1) and 2(a)(2) of this SFAR.

(b) *Aeronautical Experience.*

(1) No person may act as pilot in command of a Robinson model R–22 unless that person:

(i) Has logged at least 200 flight hours in helicopters, at least 50 flight hours of which were in the Robinson R–22; or

(ii) Has logged at least 10 hours of flight training in the Robinson R–22 and has received an endorsement from a flight instructor authorized under paragraph 2(b)(5)(iv) of this SFAR that the individual has been given the training required by this paragraph and is proficient to act as pilot in command of an R–22. The flight training must include at least the following abnormal and emergency procedures:

(A) Training in autorotation procedures and energy management, including utilizing a combination of flight control inputs and maneuvering to prevent overshooting or undershooting the selected landing area from an entry altitude that permits safe recovery;

(B) Autorotations at an entry altitude that permits safe maneuvering and recovery utilizing maximum glide configuration;

(C) Engine rotor RPM control without the use of the governor; and

(D) Low rotor RPM recognition and recovery.

(iii) Pilots who do not meet the experience requirement of paragraph 2(b)(1)(i) of this SFAR may not act as pilot in command of a Robinson R–22 beginning 12 calendar months after the date of the endorsement identified in paragraph 2(b)(1)(ii) of this SFAR until those pilots have:

(A) Completed a flight review of the ground training subject areas identified by paragraph 2(a)(3) of this SFAR and the flight training identified in paragraph 2(b)(1)(ii) of this SFAR in an R–22; and

(B) Obtained an endorsement for that flight review from a flight instructor authorized under paragraph 2(b)(5)(iv) of this SFAR.

(2) No person may act as pilot in command of a Robinson R–44 unless that person—

(i) Has logged at least 200 flight hours in helicopters, at least 50 flight hours of which were in the Robinson R–44. The pilot in command may credit up to 25 flight hours in the Robinson R–22 toward the 50-hour requirement in the Robinson R–44; or

(ii) Has logged at least 10 hours of flight training in a Robinson helicopter, at least 5 hours of which must have been accomplished in the Robinson R–44 helicopter, and has received an endorsement from a flight instructor authorized under paragraph 2(b)(5)(iv) of this SFAR, that the individual has been given the training required by this paragraph 2(b)(2)(ii) and is proficient to act as pilot in command of an R–44. The flight training must include at least the following abnormal and emergency procedures—

(A) Training in autorotation procedures and energy management, including utilizing a combination of flight control inputs and maneuvering to prevent overshooting or undershooting the selected landing area from an entry altitude that permits safe recovery;

(B) Autorotations at an entry altitude that permits safe maneuvering and recovery utilizing minimum rate of descent configuration and maximum glide configuration;

(C) Engine rotor RPM control without the use of the governor; and

(D) Low rotor RPM recognition and recovery.

(iii) Pilots who do not meet the experience requirement of paragraph 2(b)(2)(i) of this SFAR may not act as pilot in command of a Robinson R–44 beginning 12 calendar months after the date of the endorsement identified in paragraph 2(b)(2)(ii) of this SFAR until those pilots have:

(A) Completed a flight review of the ground training subject areas identified by paragraph 2(a)(3) and the flight training identified in paragraph 2(b)(2)(ii) of this SFAR in an R–44; and

(B) Obtained an endorsement for that flight review from a flight instructor authorized under paragraph 2(b)(5)(iv) of this SFAR.

(3) A person who does not hold a rotorcraft category and helicopter class rating must have logged at least 20 hours of flight training in a Robinson R–22 helicopter from a flight instructor authorized under paragraph 2(b)(5)(iv) of this SFAR prior to operating it in solo flight. In addition, the person must obtain an endorsement, from a flight instructor authorized under paragraph 2(b)(5)(iv) of this SFAR, that training has been given in those maneuvers and procedures, and the instructor has found the applicant proficient to solo a Robinson R–22. This endorsement is valid for a period of 90 days. The flight training must include at least the following abnormal and emergency procedures:

(i) Training in autorotation procedures and energy management, including utilizing a combination of flight control inputs and maneuvering to prevent overshooting or undershooting the selected landing area from an entry altitude that permits safe recovery;

(ii) Autorotations at an entry altitude that permits safe maneuvering and recovery utilizing maximum glide configuration;

(iii) Engine rotor RPM control without the use of the governor; and

(iv) Low rotor RPM recognition and recovery.

(4) A person who does not hold a rotorcraft category and helicopter class rating must have logged at least 20 hours of flight training in a Robinson R–44 helicopter from a flight instructor authorized under paragraph 2(b)(5)(iv) of this SFAR prior to operating it in solo flight. In addition, the person must obtain an endorsement, from a flight instructor authorized under paragraph 2(b)(5)(iv) of this SFAR, that training has been given in those maneuvers and procedures, and the instructor has found the applicant proficient to solo a Robinson R–44. This endorsement is valid for a period of 90 days. The flight training must include at least the following abnormal and emergency procedures:

(i) Training in autorotation procedures and energy management, including utilizing a combination of flight control inputs and maneuvering to prevent overshooting or undershooting the selected landing area from an entry altitude that permits safe recovery;

(ii) Autorotations at an entry altitude that permits safe maneuvering and recovery utilizing minimum rate of descent configuration and maximum glide configuration;

(iii) Engine rotor RPM control without the use of the governor and

(iv) Low rotor RPM recognition and recovery.

(5) No flight instructor may provide training or conduct a flight review in a Robinson R–22 or R–44 unless that instructor—

(i) Completes the ground training in paragraph 2(a) of this SFAR.

(ii) For the Robinson R–22, has logged at least 200 flight hours in helicopters, at least 50 flight hours of which were in the Robinson R–22, or for the Robinson R–44, logged at least 200 flight hours in helicopters, 50 flight hours of which were in Robinson helicopters. Up to 25 flight hours of Robinson R–22 flight time may be credited toward the 50-hour requirement.

(iii) Has completed flight training in a Robinson R–22, R–44, or both, on the following abnormal and emergency procedures—

(A) Training in autorotation procedures and energy management, including utilizing a combination of flight control inputs and maneuvering to prevent overshooting or undershooting the selected landing area from an entry altitude that permits safe recovery;

(B) For the Robinson R–22, autorotations at an entry altitude that permits safe maneuvering and recovery utilizing maximum glide configuration. For the Robinson R–44, autorotations at an entry altitude that permits safe maneuvering and recovery utilizing maximum glide configuration and minimum rate of descent configuration;

(C) Engine rotor RPM control without the use of the governor; and

(D) Low rotor RPM recognition and recovery.

(iv) Has been authorized by endorsement from an FAA aviation safety inspector or authorized designated examiner that the instructor has completed the appropriate training, meets the experience requirements, and has satisfactorily demonstrated an ability to provide training on the general subject areas of paragraph 2(a)(3) of this SFAR, and the flight training identified in paragraph 2(b)(5)(iii) of this SFAR.

(c) *Flight Review:*

(1) No flight review completed to satisfy § 61.56 by an individual after becoming eligible to function as pilot in command in a Robinson R–22 helicopter shall be valid for the operation of an R–22 helicopter unless that flight review was taken in an R–22.

(2) No flight review completed to satisfy § 61.56 by an individual after becoming eligible to function as pilot in command in a Robinson R–44

helicopter shall be valid for the operation of an R–44 helicopter unless that flight review was taken in the R–44.

(3) The flight review will include a review of the ground training subject areas of paragraph 2(a)(3) of this SFAR and flight training in abnormal and emergency procedures, in the Robinson R–22 or R–44 helicopter, as appropriate, identified in paragraph 2(b) of this SFAR.

(d) *Currency Requirements:* No person may act as pilot in command of a Robinson model R–22 or R–44 helicopter carrying passengers unless the pilot in command has met the recency of flight experience requirements of § 61.57 in an R–22 or R–44, as appropriate.

3. *Expiration date.* This SFAR No. 73 expires [DATE FIVE YEARS AFTER EFFECTIVE DATE OF THE FINAL RULE] unless sooner revised or rescinded.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC.

Wesley L. Mooty,

Acting Deputy Executive, Flight Standards Service.

[FR Doc. 2023–22634 Filed 10–16–23; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2023–0422; FRL–11353–01–R9]

Air Plan Revisions; California; Butte County Air Quality Management District; Nonattainment New Source Review Requirements for the 2015 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve state implementation plan (SIP) revisions submitted by the State of California addressing the nonattainment new source review (NNSR) requirements for the 2015 8-hour ozone national ambient air quality standards (NAAQS or ''standard''). This SIP revision addresses the Butte County Air Quality Management District (''District'') portion of the California SIP. This action is being taken pursuant to the Clean Air Act (CAA or ''Act'') and its implementing regulations.

DATES: Comments must be received on or before November 16, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2023–0422 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Shaheerah Kelly, EPA Region IX, 75 Hawthorne Street (AIR–3–2), San Francisco, CA 94105. By phone: (415) 947–4156 or by email at *kelly.shaheerah@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to EPA.

Table of Contents

I. Background and Purpose

On October 26, 2015, the EPA promulgated a revised 8-hour ozone NAAQS of 0.070 parts per million (ppm).[1] Upon promulgation of a new or revised NAAQS, the CAA requires the EPA to designate as nonattainment any area that is violating the NAAQS based on the three most recent years of ambient air quality data. Butte County was classified as a ''Marginal'' ozone nonattainment area.[2]

On December 6, 2018, the EPA issued a final rule entitled, ''Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements'' (''SIP Requirements Rule''), which establishes the requirements and deadlines that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where ozone concentrations exceed the 2015 ozone NAAQS.[3] Based on the initial nonattainment designation for the 2015 ozone standard, the District was required to make a SIP revision addressing NNSR no later than August 3, 2021. See 40 CFR 51.1314. This requirement may be met by submitting a SIP revision consisting of a new or revised NNSR permit program.

II. The State's Submittal

A. What did the State submit?

Table 1 lists the dates the submitted rule addressed by this proposal was amended by the District and submitted by the California Air Resources Board (CARB), the agency that serves as the governor's designee for California SIP submittals.

[1] 80 FR 65292 (October 26, 2015).

[2] 83 FR 25776 (June 4, 2018).

[3] 83 FR 62998 (December 6, 2018). The SIP Requirements Rule addresses a range of nonattainment area SIP requirements for the 2015 ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology, reasonably available control measures, major new source review, emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP.

TABLE 1—SUBMITTED RULE

Rule	Title	Amendment date	Submittal date	Cover letter date
Rule 432	Federal New Source Review (FNSR)	4/22/2021	8/3/2021	8/3/2021

On February 3, 2022, CARB's August 3, 2021 submittal was deemed to be complete by operation of law in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. What is the purpose of the submitted rule?

The submittal from the District is intended to satisfy the SIP Requirements Rule that requires states to make a SIP revision addressing NNSR. The SIP for the District currently contains an approved NNSR permit program based on their nonattainment classification for the 2008 8-hour ozone NAAQS. This submittal is intended to satisfy the 40 CFR 51.1314 submittal requirements based on the District's 2015 ozone nonattainment designation. The EPA's analysis of how these SIP revisions address the NNSR requirements for the 2015 ozone NAAQS is provided below.

III. Analysis of Nonattainment New Source Review Requirements

The minimum SIP requirements for NNSR permitting programs for the 2015 8-hour ozone NAAQS are contained in 40 CFR 51.165. These NNSR program requirements include those promulgated in the SIP Requirements Rule implementing the 2015 ozone NAAQS. The SIP for each ozone nonattainment area must contain NNSR provisions that: (1) set major source thresholds for nitrogen oxides (NO_X) and volatile organic compounds (VOC) pursuant to 40 CFR 51.165(a)(1)(iv)(A)(*1*)(*i*)–(*iv*) and (*2*); (2) classify physical changes as a major source if the change would constitute a major source by itself pursuant to 40 CFR 51.165(a)(1)(iv)(A)(*3*); (3) consider any significant net emissions increase of NO_X as a significant net emissions increase for ozone pursuant to 40 CFR 51.165(a)(1)(v)(E); (4) consider any increase of VOC emissions in extreme ozone nonattainment areas as significant net emissions increases and major modifications for ozone pursuant to 40 CFR 51.165(a)(1)(v)(F); (5) set significant emissions rates for VOC and NO_X as ozone precursors pursuant to 40 CFR 51.165(a)(1)(x)(A)–(C) and (E); (6) contain provisions for emissions reductions credits pursuant to 40 CFR 51.165(a)(3)(ii)(C)(*1*)–(*2*); (7) provide that the requirements applicable to VOC also apply to NO_X pursuant to 40 CFR 51.165(a)(8); (8) set offset ratios for VOC and NO_X pursuant to 40 CFR 51.165(a)(9)(ii)–(iv); and (9) require public participation procedures complaint with 40 CFR 51.165(i).

The District's SIP-approved NNSR program, established in Rule 432, ''Federal New Source Review (FNSR)'' (amended March 23, 2017) (''Rule 432''), applies to the construction and modification of stationary sources, including major stationary sources in nonattainment areas under its jurisdiction.[4] The only change from the SIP-approved NNSR program is the removal of provisions related to interpollutant trading, due to a recent court decision that vacated the interpollutant trading program.[5] The District's submitted SIP revision includes a compliance demonstration, consisting of a table listing each of the 2015 ozone NAAQS NNSR SIP requirements from 40 CFR 51.165 and a citation to the specific provision of Rule 432 satisfying the requirement. These documents are available in the docket for this action. The EPA has reviewed the demonstration and cited program elements intended to meet the federal NNSR requirements and is proposing to approve the District's submittal because the current SIP-approved NNSR program contains all the SIP Requirements Rule NNSR program requirements applicable to the Butte County nonattainment area as a Marginal ozone nonattainment area.

IV. Proposed Action and Public Comment

The EPA is proposing to approve SIP revisions addressing the NNSR requirements for the 2015 ozone NAAQS for the District. In support of this proposed action, we have concluded that our approval of Rule 432 would comply with section 110(l) of the Act because the submittal will not interfere with continued attainment of the NAAQS in the District. The EPA has concluded that the State's submission fulfills the 40 CFR 51.1314 revision requirements and meets the requirements of CAA section 110 and the minimum SIP requirements of 40 CFR 51.165. If we finalize this action as proposed, our action will incorporate submitted Rule 432 into the federally enforceable SIP and be codified through revisions to 40 CFR 52.220 (Identification of plan-in part).

We will accept comments from the public on this proposal until November 16, 2023.

V. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the District's Rule 432, ''Federal New Source Review (FNSR),'' amended on April 22, 2021, which contains an NNSR program that meets federal permitting requirements. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and in hard copy at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 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

[4] 81 FR 93820 (December 22, 2016), and 83 FR 26222 (June 6, 2018).

[5] *Sierra Club* v. *EPA,* 21 F.4th 815 (D.C. Cir. 2021) and 86 FR 37918 (July 19, 2021).

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 proposes to approve 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 Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

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

Dated: October 3, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2023–22372 Filed 10–16–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2020–0104; FF09E22000 FXES11130900000 234]

RIN 1018–BC98

Endangered and Threatened Wildlife and Plants; Removing Phyllostegia glabra var. lanaiensis From the List of Endangered or Threatened Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), withdraw the proposal to remove *Phyllostegia glabra* var. *lanaiensis* from the Federal List of Endangered and Threatened Plants (List). This withdrawal is based on new surveys conducted over the past 3 years since completing the 5-year review for the species; these surveys have identified new suitable habitats comprised of native vegetation within the former range of *P. glabra* var. *lanaiensis.* Therefore, we determined that additional information is needed before concluding that the species is extinct. With this withdrawal of the proposal, *P. glabra* var. *lanaiensis* will remain on the List as endangered. Elsewhere in this issue of the **Federal Register**, we publish a final rule removing 21 species that were part of our September 30, 2021, proposed rule.

DATES: The proposal to remove *P. glabra* var. *lanaiensis* from the Federal List of Endangered and Threatened Plants, which published on September 30, 2021 (86 FR 54298), is withdrawn on October 17, 2023.

ADDRESSES: Relevant documents used in the preparation of this withdrawal are available on the internet at *https://www.regulations.gov* at Docket No. FWS–R1–ES–2020–0104.

FOR FURTHER INFORMATION CONTACT: Earl Campbell, Field Supervisor, Pacific Islands Fish and Wildlife Office (see **ADDRESSES**); telephone 808–792–9400; facsimile 505–346–2542. 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:

Previous Federal Actions

We published a final rule to list *Phyllostegia glabra* var. *lanaiensis* as an endangered species on September 20, 1991 (56 FR 47686), and *P. glabra* var. *lanaiensis* was included in the Lanai plant cluster recovery plan in 1995 (USFWS 1995, entire). At the time of listing, no wild individuals had been seen since 1914, although there was one questionable sighting from the 1980s that was later considered to be *P. glabra* var. *glabra* (USFWS 1995, pp. 31–35; USFWS 2012, p. 7). Threats included habitat degradation and herbivory by feral ungulates, the establishment of ecosystem-altering invasive plant species, and the consequences of small population sizes (low numbers) (USFWS 1995, p. 56). In 2000, designation of critical habitat was considered not prudent for *P. glabra* var. *lanaiensis* because this plant had not been observed in the wild in over 20 years, and no viable genetic material was available for recovery efforts (65 FR 82086; December 27, 2000). Two 5-year status reviews have been completed; the 2012 review (initiated on April 8, 2010; see 75 FR 17947) recommended surveys within the historical range and within suitable habitat on Lanai, with no change in status. Despite repeated surveys of historical and suitable habitat by botanists since 2006, *P. glabra* var. *lanaiensis* has not been found (Plant Extinction Prevention Program (PEPP) 2012, p. 45; Oppenheimer 2019, in litt.). In 2012, PEPP reported that *P. glabra* var. *lanaiensis* was likely extinct. The 5-year status review completed in 2019 (initiated on February 12, 2016; see 81

FR 7571) recommended delisting due to extinction.

On September 30, 2021, we published a proposed rule to remove 23 species, including *P. glabra* var. *lanaiensis,* from the Federal Lists of Endangered and Threatened Wildlife and Plants (*i.e.,* to ''delist'' the species) due to extinction (86 FR 54298). At that time, we invited the public to comment on the proposal.

Elsewhere in this issue of the **Federal Register**, we publish a final rule to remove 21 of the 23 species included in our September 30, 2021, proposed rule from the Federal List of Endangered and Threatened Wildlife. That final rule's Summary of Changes from the Proposed Rule references this rule withdrawing the proposed delisting of *P. glabra* var. *lanaiensis.*

Supporting Documents

Prior to publishing the proposed delisting rule (86 FR 54298; September 30, 2021), we conducted a status assessment for *P. glabra* var. *lanaiensis.* The results of this assessment are summarized in a species assessment form, which represents a compilation of the best scientific and commercial data available concerning the status of the species, including the past, present, and future stressors to this species (Service 2021, entire).

In accordance with our policy, ''Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,'' which was published on July 1, 1994 (59 FR 34270) and our August 22, 2016, Director's Memorandum ''Peer Review Process,'' we sought the expert opinion of five appropriate and independent specialists regarding scientific data and interpretations contained in the 5-year review for *P. glabra* var. *lanaiensis.* We sent copies of the 5-year review to the peer reviewers immediately following publication of the proposed rule in the **Federal Register** (86 FR 54298; September 30, 2021). The purpose of such review is to ensure that our decisions are based on scientifically sound data, assumptions, and analysis. We received feedback from one of the five peer reviewers. We have incorporated the results of this review, as appropriate, into the species assessment form and this document.

Summary of Comments and Recommendations

In the proposed rule published on September 30, 2021 (86 FR 54298), we requested that all interested parties submit written comments on the proposal by November 29, 2021. We also contacted appropriate State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. A newspaper notice inviting the public to provide comments was published in USA Today on October 8, 2021. All substantive information regarding the delisting of *P. glabra* var. *lanaiensis* that was provided during peer review and the comment period has been incorporated directly into this final determination or into our species assessment form, as appropriate, or is addressed below.

Peer Review Comments

We reviewed all comments we received from the peer reviewer for substantive issues and new information regarding *P. glabra* var. *lanaiensis.* The peer reviewer provided additional information and clarifications on results of surveys, which we incorporated into the species assessment form and this document.

Public Comments

We reviewed all public comments that we received on the proposed rule (86 FR 54298; September 30, 2021). While there were many comments that discussed other species in the proposed rule, there were no comments that specifically addressed *P. glabra* var. *lanaiensis.* We did not receive a request for a public hearing for this species.

Background

A thorough review of the taxonomy, range and distribution, life history, and ecology of *P. glabra* var. *lanaiensis* is presented in the species assessment form (Service 2021, entire) and is briefly summarized here. *Phyllostegia glabra* var. *lanaiensis* is a short-lived perennial herb. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors of *P. glabra* var. *lanaiensis* remain unknown (USFWS 1995, p. 19; USFWS 2012, p. 7). *P. glabra* var. *lanaiensis* was described as a variety of *P. glabra* from specimens collected from Lanai by Ballieu, Munro, and Mann and Brigham. It differed from *P. glabra* var. *glabra* in its longer calyx (the collection of modified leaves that enclose the petals and other parts of a flower) (0.3 inches or 10–11 millimeters) and narrowly lanceolate leaves (Wagner et al. 1990, p. 816). No taxonomic changes have been made since the variety was described in 1934.

Historically, *P. glabra* var. *lanaiensis* was known from only two collections from Lanai, one from the ''mountains of Lanai,'' and the other from Kaiholena Gulch, where it was last collected in 1914 (USFWS 1991, p. 47688; USFWS 1995, pp. 31–35; Wagner 1999, p. 269; Hawaii Biodiversity and Mapping Program 2010, entire). A report of this species from the early 1980s in a gulch feeding into the back of Maunalei Valley probably was erroneous and likely *P. glabra* var. *glabra* (USFWS 1995, pp. 31–35; USFWS 2003, p. 1223; Wagner 1999, p. 269). Very little is known of the preferred habitat or associated species of *P. glabra* var. *lanaiensis* on the island of Lanai. It has been observed in lowland wet-mesic forest in gulch bottoms and sides, often in quite steep areas, in the same habitat as the endangered *Cyanea gibsonii* (also known as *Cyanea macrostegia* ssp. *gibsonii*) (USFWS 1995, p. 23).

Regulatory and Analytical Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species. In 2019, jointly with the National Marine Fisheries Service, the Service issued a final rule that revised the regulations in 50 CFR part 424 regarding how we add, remove, and reclassify endangered and threatened species and the criteria for designating listed species' critical habitat (84 FR 45020; August 27, 2019).

Under the Act (16 U.S.C. 1531 *et seq.*), we must review the status of all listed species at least once every 5 years. We must delist a species if we determine, on the basis of the best available scientific and commercial data, that the species is neither a threatened species nor an endangered species. Our regulations at 50 CFR 424.11(e) identify three reasons why we might determine that a listed species is neither an endangered species nor a threatened species: (1) The species is extinct; (2) the species does not meet the definition of an endangered species or a threatened species; or (3) the listed entity does not meet the statutory definition of a species.

In this document to withdraw the proposal to delist *P. glabra* var. *lanaiensis,* we use the commonly understood biological definition of ''extinction'' as meaning that no living individuals of the species remain in existence. A determination of extinction will be informed by the best available information to indicate that no individuals of the species remain alive, either in the wild or captivity. This is in contrast to ''functional extinction,'' where individuals of the species remain alive, but the species is no longer viable

and/or no reproduction will occur (*e.g.,* any remaining females cannot reproduce, only males remain, etc.).

In our analyses, we attempt to minimize the possibility of either (1) prematurely determining that the species is extinct where individuals exist but remain undetected, or (2) assuming the species is extant when extinction has already occurred. Our determination of whether the best available information indicates that the species is extinct includes an analysis of the following criteria: detectability of the species, adequacy of survey efforts, and time since last detection. All three criteria take into account applicable aspects of the species' life history. Other lines of evidence may also support the determination and be included in our analysis.

In conducting our analysis of whether *P. glabra* var. *lanaiensis* is extinct, we considered and thoroughly evaluated the best scientific and commercial data available. We reviewed the information available in our files, and other available published and unpublished information, including information from recognized experts; Federal, State, and Tribal governments; academic institutions; foreign governments; private entities; and other members of the public.

The 5-year reviews of *P. glabra* var. *lanaiensis* contain more detailed biological information. This supporting information can be found on the internet at *https://www.regulations.gov* under Docket No. FWS–R1–ES–2020–0104. The following information summarizes the analysis for *P. glabra* var. *lanaiensis.*

Summary of Biological Status and Threats

Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

Phyllostegia glabra var. *lanaiensis* is a short-lived perennial herb. This taxon differs from the other variety by its longer calyces and narrowly lanceolate leaves, suggesting that flowers should be present in order to confirm identification. Most congeners (an organism belonging to the same taxonomic genus as another organism) tend to flower year-round, with peak flowering from April through June, indicating that it would be easier to detect and confirm the species during this time period.

Survey Effort

The PEPP surveys and monitors rare plant species on Lanai; botanical surveys are conducted on a rotational basis, based on the needs for collections and monitoring. Opportunistic surveys are also conducted when botanists are within the known range and suitable habitat when other work brings them to that area. No observations of *P. glabra* var. *lanaiensis* have been reported since 1914. By 2012, PEPP determined that this variety was likely extirpated (PEPP 2012, p. 45), with very little chance of rediscovery due to the restricted known range, thorough search effort, and extent of habitat degradation. However, botanists were still searching for this taxon on any surveys in or near its last known location and other suitable habitat, including in January 2019 (Oppenheimer 2019, in litt.). In 2021, a new population for each of two other endangered plant taxa, *Cyanea lobata* ssp. *baldwinii* and *C. gibsonii,* were surprisingly discovered in gulches (deep ravines), where these species had not recently been known to occur, in small pockets of remnant native habitat within larger disturbed habitat. *C. gibsonii* is a known associated species of *P. glabra* var. *lanaiensis.* In January 2022, additional pockets of remnant native habitat were discovered on the slopes of Kaiholena gulch, where *P. glabra* var. *lanaiensis* had previously been known, and new locations for a third endangered plant, *Pleomele fernaldii,* were discovered. These pockets were observed from afar during survey efforts within the gulch bottom, and additional surveys are needed to identify and search these pockets within the lowland wet-mesic forest in this area, as well as in adjacent gulches.

Time Since Last Detection

All *P. glabra* identified since 1914 have been determined to be *P. glabra* var. *glabra,* and, therefore, *P. glabra* var. *lanaiensis* has not been detected since 1914.

Analysis

Threats to the species included habitat degradation and herbivory by feral ungulates such as axis deer (*Axis axis*), the establishment of ecosystem-altering invasive plant species, and the consequences of small population sizes. Historically, much of the native vegetation on Lanai was altered by early land practices with the ranching of cattle and sheep, clearing for pineapple cultivation, and introduction of other feral animals such as goats and deer (USFWS 1990, pp. 38239–38240). While many of these foreign introduced animals have been removed from the island, habitat degradation and predation due to animals such as axis deer remain a threat.

Since the 1990s, several species of exotic plants have become common on the summit and in the gulches and valleys of Lanai. Strawberry guava (*Psidium cattleianum*) is most common on the northern end of Lanaihale (the highest point of the island of Lanai), firebush (*Myrica faya*) is most common on the south end, and manuka (*Leptospermum scoparium*) has spread throughout the island (USFWS 2020, p. 11). Kahili ginger (*Hedychium gardnerianum*) is common on some of the valley floors, as in Kaiholena Gulch, for instance, while koa haole (*Leucaena leucocephala*), lantana (*Lantana camara*), and sourbush (*Pluchea carolinensis*) also are aggressive invaders. These weedy plants are more aggressive than the native species and more successfully compete for water, minerals, space, and light. In the drier areas, broomsedge (*Andropogon virginicus*) and Guinea grass (*Megathyrsus maximus*) are the dominant exotic species (USFWS 2020, p. 11). Not only do these species replace native plants, but they are a source of fuel, increasing the potential threat of fire in the area.

Despite repeated surveys of historical and suitable habitat by botanists from 2006 through 2019, *P. glabra* var. *lanaiensis* has not been found since 1914 (PEPP 2012, p. 45; Oppenheimer 2019, in litt.). In 2012, PEPP reported that *P. glabra* var. *lanaiensis* was likely extinct. In 2019, the species was included on the list of possibly extinct Hawaiian vascular plant taxa (Wood et al. 2019, p. 11). Since 2019, however, new surveys have indicated that several endangered species have persisted in small pockets of remnant native forest within largely degraded habitat. Due to the presence and location of these pockets, as well as the associated species observed to date, we conclude that additional surveys should be conducted for this taxon.

Summary of Analysis

At the time of its listing in 1991, *P. glabra* var. *lanaiensis* had not been detected in over 75 years. Since its last detection in 1914, botanical surveys have not detected the species. Available information indicates that, while there are currently no known individuals of the species, suitable habitat consisting of small patches of native forest on steep slopes of gulches may provide refuge for individuals of this taxon. These small remnant native forest patches, especially in steeper locations along slopes of gulches where this taxon had previously been observed, may offer some escape from direct feral ungulate damage when animals cannot traverse

some small, extremely steep microsites. Additional surveys are needed for this taxon before we can conclude it is extinct. Therefore, we are withdrawing our proposed rule to remove *P. glabra* var. *lanaiensis* from the List of Endangered and Threatened Plants.

References Cited

A complete list of references cited in this document is available on the internet at *https://www.regulations.gov* at Docket No. FWS–R1–ES–2020–0104 and upon request from the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this document are the staff members of the Branch of Delisting and Foreign Species, Ecological Services Program, and Pacific Islands Fish and Wildlife Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–22376 Filed 10–16–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 230802–0182]

RIN 0648–BL87

Endangered and Threatened Wildlife and Plants; Proposed Protective Regulations for the Threatened Banggai Cardinalfish (Pterapogon Kauderni); Extension of Comment Period

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

ACTION: Proposed rule; extension of comment period.

SUMMARY: We, NMFS, are extending the public comment period by 60 days for our proposed rule to promulgate protective regulations for the Banggai cardinalfish (*Pterapogon kauderni*). The end of the public comment period is extended from October 16, 2023, to December 15, 2023.

DATES: The comment period for the proposed rule to promulgate protective regulations for the Banggai cardinalfish under the Endangered Species Act (ESA), published on August 15, 2023 (88 FR 55431), is extended from October 16, 2023, to December 15, 2023. Comments received after December 15, 2023, may not be accepted.

A virtual public hearing on the proposed rule will be held at a later date and notice of the date and time of any such hearing will be published in the **Federal Register** not less than 15 days before the hearing is held.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2023–0099, by Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *https://www.regulations.gov* and enter NOAA–NMFS–2023–0099 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 *https://www.regulations.gov without change.* All Personal Identifying Information (*e.g.,* name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

We will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Celeste Stout, NMFS, Office of Protected Resources, *celeste.stout@noaa.gov,* (301) 427–8436; Erin Markin, NMFS, Office of Protected Resources, *erin.markin@noaa.gov,* (301) 427–8416.

SUPPLEMENTARY INFORMATION: On August 15, 2023, NMFS published a proposed rule to promulgate protective regulations for the Banggai cardinalfish under the ESA (88 FR 55431). In that proposed rule, we also announced a 60-day public comment period, and an option to request a public hearing. On September 27, 2023, we received a letter requesting a public hearing be held as well as a 90-day extension to the public comment period. In response, we are extending the public comment period by another 60 days, and are accepting public comments for the proposed rule through December 15, 2023. Public comments can be submitted as described under **ADDRESSES**. Additionally, the date and time of any public hearing will be published in the **Federal Register** not less than 15 days before the hearing is held.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 11, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2023–22821 Filed 10–12–23; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 231010–0243]

RIN 0648–BL34

Pacific Island Fisheries; Modification of Seabird Interaction Mitigation Measures in the Hawaii Deep-Set Longline Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to modify seabird interaction mitigation measures to require federally permitted Hawaii deep-set longline vessels that set fishing gear from the stern to use a tori line (bird scaring streamer) in place of the currently required thawed, blue-dyed bait and strategic offal (fish, fish parts, or spent bait) discharge when fishing above 23° N latitude. This action is expected to improve the overall efficacy and operational practicality of required seabird mitigation measures by reducing seabird bycatch and creating operational and administrative efficiency for fishermen and NMFS.

DATES: NMFS must receive comments by November 16, 2023.

ADDRESSES: You may submit comments on this proposed rule, identified by NOAA–NMFS–2022–0131, by either of the following methods:

- *Electronic Submission:* Submit all electronic comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0131 in the Search box, click the ''Comment'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Send written comments to Sarah Malloy, Acting Regional Administrator, NMFS Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

Instructions: NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

The Western Pacific Fishery Management Council and NMFS prepared a draft environmental assessment and regulatory impact review that supports this proposed rule. The draft environmental assessment is available at *www.regulations.gov,* or from the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, 808–522–8220, or *www.wpcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Lynn Rassel, PIRO Sustainable Fisheries, 808–725–5036.

SUPPLEMENTARY INFORMATION: NMFS and the Western Pacific Fishery Management Council (Council) manage the Hawaii deep-set longline fishery under the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (FEP). The implementing Federal regulations for this fishery include a suite of conservation and management requirements. Since 1994, the NMFS Pacific Islands Regional Office Observer Program has monitored seabird interactions in the Hawaii longline fisheries. In response to large numbers of seabird interactions, NMFS implemented a suite of seabird mitigation requirements in 2001. The current seabird requirements, including the use of thawed, blue-dyed bait and strategic offal discharge, began in 2002 (67 FR 34408, May 14, 2002) and were revised in 2005 (70 FR 75075, December 19, 2005). These requirements resulted in the reduction of seabird interactions by 70–90 percent. However, seabird interactions in the Hawaii longline fisheries gradually increased in the subsequent years, with significant increases in black-footed albatross interactions in the deep-set fishery since 2015.

In 2017, the Council held a workshop to explore the cause of the increasing interactions with black-footed albatross. The workshop suggested that a positive (warm) Pacific Decadal Oscillation, with its cooler sea surface in the western Pacific and stronger westerly winds, may increase the overlap of fishing effort and black-footed albatross foraging grounds, leading to more seabird interactions in the fishery. In 2018, the Council held a follow-up workshop to review seabird mitigation requirements and identify research needed to inform potential future requirements to reduce interactions with seabirds. That workshop identified certain mitigation measures, including tori lines, as a high priority for further research and development due to their potential to provide an effective alternative to blue-dyed bait.

Resulting cooperative research by the Council, the Hawaii Longline Association (HLA), NMFS Pacific Islands Fisheries Science Center (PIFSC), and NMFS Pacific Islands Regional Office in 2019–2021 demonstrated that when tori lines are employed in lieu of blue-dyed bait and strategic offal discharge on deep-set longline vessels that set from the stern, albatross attempts are 1.5 times less likely, contacts are 4 times less likely, and captures are 14 times less likely. Furthermore, there is inconclusive evidence that the existing strategic offal discharge requirements reduce seabird interaction risk, and the requirement is associated with heavy administrative burdens to the Pacific Islands Region Observer Program and NOAA Office of Law Enforcement. Similarly, use of blue-dyed bait is burdensome due to the amount of time required to thaw and dye the bait, thawed bait loss from hooks, vessel maintenance costs related to using vats of blue dye, and the administrative burden to monitor and enforce consistent application of blue dye. We note that this proposed action would only modify seabird mitigation requirements for the Hawaii deep-set fishery; however, research on mitigation measures is currently underway in the Hawaii shallow-set fishery.

At its 189th meeting in December 2021, the Council recommended replacing thawed, blue-dyed bait and strategic offal discharge requirements for stern-setting deep-set longline vessels with a new requirement to use a tori line that meets certain design and material specifications. In lieu of a regulatory requirement to strategically discharge offal, the Council recommended implementing best practices training on offal management as part of the required annual protected species workshop.

Pursuant to the Council's recommendations, NMFS proposes to require deep-set longline vessels that stern-set to employ a tori line system instead of using thawed, blue-dyed bait and strategic offal discharge when fishing north of 23° N latitude. These measures would modify the requirements implemented at 50 CFR 665.815. NMFS also proposes to require that vessels deploy a tori line system that meets required material, length, and position specifications prior to the first hook being set.

All Hawaii longline vessels would continue to be required to follow other existing seabird handling and release requirements at 50 CFR 665.815(b) and (c) to maximize the chances of post-release survival of seabirds that are caught alive, and to be certified for the completion of an annual protected species workshop conducted by NMFS (50 CFR 665.814). All other measures applicable to longline fisheries under the FEP would remain unchanged. This proposed rule and any related tori line design guidelines would also be consistent with seabird mitigation requirements set forth by the Western and Central Pacific Fisheries Commission (WCPFC) and the Inter-American Tropical Tuna Commission (IATTC) (see, *https://www.iattc.org/PDFFiles/Resolutions/IATTC/_English/C-11-02-Active_Seabirds.pdf* and *www.wcpfc.int/doc/wcpfc15-2018-dp16/seabird-interaction-mitigation-amendment-cmm-2017-06).*

The proposed rule would also make housekeeping changes at 50 CFR 665.802 to clarify prohibitions for vessels with Hawaii longline limited access permits. Specifically, the proposed rule would improve descriptions of which vessels the prohibitions apply to. The proposed rule would also correct the omission of a prohibition for side-setting (setting the mainline from the port or starboard side of the vessel at least one meter from the stern) without a bird curtain and weighted branch lines.

NMFS will consider public comments on this proposed rule and will announce the final rule in the **Federal Register**. NMFS must receive comments on this proposed action by the date provided in the **DATES** heading. NMFS may not consider comments postmarked or otherwise transmitted after that date. Regardless of the final rule, all other existing management measures would continue to apply in the longline fisheries.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery

Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FEP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

Certification of Finding of No Significant Impact on Substantial Number of Small Entities

The Chief Counsel for Regulation for the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The proposed rule would modify seabird interaction mitigation measures to require Hawaii deep-set longline fishing vessels that set fishing gear from the stern to use a tori line (bird scaring streamer) with associated tori line design and material specifications in place of the current thawed, blue-dyed bait and strategic offal (fish, fish parts, or spent bait) discharge requirements when fishing north of 23° N latitude. In lieu of the existing strategic offal discharge requirement, best practices on offal management would become part of the already required annual protected species workshop conducted by NMFS for longline vessel owners and operators. In this workshop, vessel owners and operators receive training on interaction mitigation techniques for sea turtles, seabirds, marine mammals, and other protected species. Such best practices for offal management include, among others, discharging offal from the opposite side of the vessel from where gear is being hauled while seabirds are actively pursuing the baited hooks. This action, together with best practices training, is expected to improve the overall efficacy and operational practicality of required seabird mitigation measures while reducing seabird bycatch.

Under the proposed action, fishery participants who currently use blue-dyed bait while stern-setting when fishing north of 23° N latitude would be required to either use tori lines or switch to side-setting. Many deep-set longline fishery participants perceive meeting the current blue-dyed bait requirement as burdensome and have expressed interest in using tori lines instead. A small portion of participants may initially favor blue-dyed bait over tori lines due to its familiarity and perceived uncertainty associated with a new measure. Hawaii longline vessel design does not allow a vessel to easily convert between stern-setting and side-setting without considerable and costly modifications. Vessels that side-set fishing gear make up a small proportion of the Hawaii longline fisheries and are already required by regulations at 50 CFR 665.815(a)(1)(vii) to, among other mitigation measures, deploy a bird curtain with streamers that operate similarly to a tori line used in stern-setting. For all of these reasons, NMFS expects that most of the stern-setting vessels will switch to tori lines if they have not already, rather than continuing to use blue-dyed bait or convert to side-setting.

Each tori line is expected to cost roughly $350 (inclusive of materials and labor), and a tori pole constructed of marine-grade stainless steel is expected to cost approximately $375 (inclusive of materials and labor). Tori lines meeting the required design specifications are not currently sold commercially but can be assembled by vessel operators and crew using materials available for purchase from local retailers or online. Although NMFS expects that tori lines may need to be replaced once every few years, the tori pole would likely last longer, given its construction using marine grade stainless steel and the use of a break-away point for the tori line that should also protect the pole from breaking. Deep-set longline vessels would be required to have two tori lines onboard at the start of every trip, so the initial cost per vessel would be $1,075 (one tori pole and two tori lines), with a recurring cost of $375 to replace a tori line once every few years. Using 2021 cost and revenue information, the initial cost of outfitting a deep-set longline vessel with tori lines represents approximately 0.1 percent of the annual revenue, and approximately 3.5 percent of gear cost. However, compliance costs associated with tori line requirements would be partially offset by the removal of the blue-dyed bait requirement at an estimated $334 per year per vessel.

Removing the offal discharge requirement would alleviate fishery participants' burden of retaining offal from the haul to discharge during the set. The recommended best practice of discharging offal from the opposite side of the vessel from where gear is being hauled while seabirds are actively pursuing the baited hooks, rather than when they are simply present, removes fishery participants' burden of strategically discharging at unnecessary times. These best practices are closely in line with current fishing operations, as well as how they would occur in the absence of the current discharge requirement.

For Regulatory Flexibility Act (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 finfish fishing (NAICS code 114111) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation, and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. The proposed action would apply to the Hawaii deep-set longline fishermen who stern-set when fishing north of 23° N latitude. Based on available information and using individual vessels as proxies for individual businesses, NMFS has determined that all affected entities are small entities (*i.e.,* they are engaged in the business of fish harvesting, are independently-owned or operated, and are not dominant in their field of operation). In 2021, active deep-set longline vessels averaged $743,151 in revenue and gross receipts did not exceed $11 million. There would be no disproportionate economic impacts between large and small entities. Furthermore, there would be no disproportionate economic impacts on the relevant vessels based on gear, home port, or vessel length. The Hawaii-based longline fisheries are managed under a single limited access fishery with a maximum of 164 vessel permits; it consists of a deep-set component that targets bigeye tuna and a shallow-set component that targets swordfish. The number of vessels participating in the deep-set longline fishery each year from 2019–2021 varied from 146 to 149. In 2021, 146 of these vessels made about 1,679 deep-set trips and almost 22,074 sets during these trips.

For the reasons above, the proposed action is not expected to have a significant economic impact on a substantial number of small entities, either through a significant loss in landings or expenses incurred. As such, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

This proposed rule does not contain a collection-of-information requirement and thus requires no review under the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 665

Fisheries, Fishing, Hawaii, Longline, seabird mitigation, Pacific Islands, Western Pacific.

Dated: October 11, 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 665 as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for 50 CFR part 665 continues to read as follows:

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

■ 2. Amend § 665.802 by revising paragraph (z), adding paragraph (ll), and revising paragraphs (mm) through (qq) to read as follows:

§ 665.802 Prohibitions.

* * * * *

(z) Fail to fish in accordance with the seabird take mitigation techniques set forth at §§ 665.815(a) when operating a vessel registered for use under a Hawaii longline limited access permit.

* * * * *

(ll) Fail to use weighted branch lines or a bird curtain that meets the specifications of 50 CFR 665.815(a)(1)(i) through(vii) when operating a side-setting vessel that is registered for use under a Hawaii longline limited access permit, when making deep-sets or shallow-sets north of 23° N lat., or shallow-sets south of 23° N lat. in violation of § 665.815(a)(1).

(mm) Fail to use a line shooter with weighted branch lines to set the main longline, and fail to use a tori line system prior to the first hook being set that meets the specifications of 50 CFR 665.815(a)(3)(i)(A) through (E) when operating a stern-setting vessel that is registered for use under a Hawaii longline limited access permit and equipped with monofilament main longline, when making deep-sets north of 23° N lat. in violation of § 665.815(a)(3).

(nn) Fail to employ basket-style longline gear such that the mainline is deployed slack when operating a vessel registered for use under a Hawaii longline limited access permit north of 23° N lat., in violation of § 665.815(a)(4).

(oo) Fail to maintain and use blue dye to prepare thawed bait when operating a stern-setting vessel registered for use under a Hawaii longline limited access permit when making shallow-sets, in violation of § 665.815(a)(2)(vi) through (vii).

(pp) Fail to retain, handle, and discharge fish, fish parts, and spent bait, strategically when operating a stern-setting vessel registered for use under a Hawaii longline limited access permit when making shallow-sets, in violation of § 665.815(a)(2)(i) through (iv).

(qq) Fail to begin the deployment of longline gear at least 1 hour after local sunset or fail to complete the setting process before local sunrise from a stern-setting vessel registered for use under a Hawaii longline limited access permit while shallow-setting, in violation of § 665.815(a)(2)(v).

* * * * *

■ 3. Amend § 665.815 by revising (a) introductory text; (a)(2) introductory paragraph, paragraphs (a)(2)(v) and (viii); and (a)(3), to read as follows:

§ 665.815 Pelagic longline seabird mitigation measures.

(a) *Seabird mitigation techniques.* When deep-setting or shallow-setting north of 23° N lat. or shallow-setting south of 23° N lat., owners and operators of vessels registered for use under a Hawaii longline limited access permit, must either side-set according to paragraph (a)(1) of this section, or fish in accordance with paragraphs (a)(2) through (4), as applicable, of this section.

* * * * *

(2) Alternative to side-setting when shallow-setting. Owners and operators of vessels engaged in shallow-setting that do not side-set must do the following:

* * * * *

(v) Begin the deployment of longline gear at least 1 hour after local sunset and complete the deployment no later than local sunrise, using only the minimum vessel lights to conform with navigation rules and best safety practices;

* * * * *

(viii) Follow the requirements in paragraphs (a)(4) of this section, as applicable.

(3) Alternative to side-setting when deep-setting. Owners and operators of vessels engaged in deep-setting using a monofilament main longline north of 23° N lat. that do not side-set must do the following:

(i) Employ a tori line system, prior to the first hook being set, that meets the following specifications:

(A) *Length and material.* The tori line must have an aerial section with a minimum length of 50 m (164 ft) and be made of ultra-high molecular weight polyethylene, or other NMFS-approved material that is light-weight, water resistant, low stretch, and floats in water. The tori line must have a drag section made of a 6 millimeters or larger braided material that is water resistant and floats in water. Monofilament nylon is prohibited for use in the aerial or drag sections of the tori line. The tori line must have a minimum total length of 100 m (328 ft).

(B) *Streamer configuration.* The aerial section of the tori line must have light-weight material (hereafter referred to as (streamers) that are attached to the aerial section at intervals less than 1 m (3.3 ft) apart. Each streamer must have a length of at least 30 cm (11.8 in) from its attachment point to the tori line so that it hangs and moves freely/flutters in the wind. Where a single streamer is either threaded through or tied to the tori line, each length must measure at least 30 cm (11. in). Streamers are not required for the last 20 m (65.6 ft) of the aerial section to minimize entanglements with buoys and fishing gear.

(C) *Number.* Two tori lines meeting the specifications in paragraphs (a)(3)(i)(A) and (a)(3)(i)(B) of this section must be present on the vessel at the start of every trip.

(D) *Attachment point and material.* The aerial section of the tori line must be attached to the vessel or a fixed structure on the vessel made of rigid material. A weak link must be placed between the tori line and the point of attachment so that the tori line will break away from the point of attachment if gear entanglement creates tension on the tori line. The attachment point must have a minimum height of 5 m (16.4 ft) above the water when the attachment point is located within 2 m (6.6 ft) of the vessel stern. When the attachment point is more than 2 m (6.6 ft) from the stern, the attachment point height must be increased by 0.5 m (1.6 ft) for every 5 m (16.4 ft) distance from the stern.

(E) *Attachment point height exemption.* If the structure used to attach the tori line breaks during a trip, the operator may use an alternative attachment point at the highest possible point on the vessel that is lower than the height specified in paragraph (a)(3)(i)(D) of this section to continue fishing north of 23° N lat. The exemption is only valid during the trip in which the structure broke.

(ii) Employ a line shooter; and

(iii) Attach a weight of at least 45 g (1.6 oz) to each branch line within 1 m (3.3 ft) of the hook.

(4) Basket-style longline gear requirement. When using basket-style longline gear north of 23° N lat., owners and operators of vessels that do not side-set must ensure that the main longline is deployed slack to maximize its sink rate.

* * * * *

[FR Doc. 2023–22799 Filed 10–16–23; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 88, No. 199
Tuesday, October 17, 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

Pacific Northwest National Scenic Trail Advisory Council

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Pacific Northwest National Scenic Trail Advisory Council (PNT) will hold a public meeting according to the details shown below. The Council is authorized under the National Trails System Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the Council is to advise and make recommendations to the Secretary of Agriculture, through the Chief of the Forest Service, on matters relating to the Pacific Northwest National Scenic Trail as described in the Act.

DATES: A virtual half-day meeting will be held on November 2, 2023, 08:30 a.m.–12:00 p.m., Pacific Daylight Time.

Written and Oral Comments: Anyone wishing to provide virtual oral comments must pre-register by 11:59 p.m. Pacific Daylight Time on October 27, 2023. Written public comments will be accepted by 11:59 p.m. Pacific Daylight Time on October 27, 2023. Comments submitted after this date will be provided to the Forest Service, but the Council may not have adequate time to consider those comments prior to the meeting.

All council 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 virtually via the Zoom app or the internet using the link posted on the PNT Advisory Council Meetings web page: *https://www.fs.usda.gov/detail/pnt/working-together/advisory-committees/?cid=fseprd505622.*

The public may also join virtually via the Zoom app or the internet using the link posted above. Council information and meeting details can be found at the following website: *https://www.fs.usda.gov/detail/pnt/working-together/advisory-committees/?cid=fseprd505622 or* by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: Written comments must be sent by email to *richard.pringle@usda.gov or* via mail (*i.e.,* postmarked) to Rick Pringle, 1220 Southwest Third Avenue, Suite 1700, Portland, Oregon 97204. 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. Pacific Daylight Time, October 27, 2023, and speakers can only register for one speaking slot. Oral comments must be sent by email to *richard.pringle@usda.gov* or via mail (*i.e.,* postmarked) to Rick Pringle, 1220 Southwest Third Avenue, Suite 1700, Portland, Oregon 97204.

FOR FURTHER INFORMATION CONTACT: Rick Pringle, Designated Federal Officer (DFO), by phone at 503–808–2401 or email at *richard.pringle@usda.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Approve meeting minutes;
2. Provide information about the status of the comprehensive plan for the Pacific Northwest National Scenic Trail;
3. Discuss and identify future PNT advisory council activity; and
4. Schedule the next meeting.

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 14 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 Council. To ensure that the recommendations of the Council have taken in 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: October 10, 2023.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2023–22868 Filed 10–16–23; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Forestry Research Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Forestry Research Advisory Committee (FRAC) will hold a public meeting according to the details shown below. The Committee is authorized under the Agriculture and Food Act of 1981 (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of this Committee is to make recommendations to and advise the Secretary of Agriculture on forestry research. The Agriculture and Food Act directs the Secretary to appoint the FRAC which advises on how to efficiently accomplish the purposes of the McIntire-Stennis Act of 1962. The FRAC focuses on developing and utilizing the Nation's forest resources, forestry schools, and forest industries. FRAC recommendations support states in carrying out a program of forestry research through land-grant colleges or agricultural experiment stations and other state-supported colleges and universities that offer graduate training in forestry. The FRAC also provides advice related to the Forest Service research program which is authorized by the Forest and Rangeland Renewable Resources Research Act of 1978.

DATES: An in-person meeting will be held on November 15, 2023, and November 16, 2023, 8:00 a.m.–4:00 p.m. Eastern Standard Time (EST).

Written and Oral Comments: Anyone wishing to provide oral comments must pre-register by 11:59 p.m. EST on November 10, 2023. Written public comments will be accepted by 11:59 p.m. EST on November 10, 2023. Comments submitted after this date will be provided to the Forest Service, but the Committee may not have adequate time to consider those comments prior to the meeting.

All committee 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 USDA Forest Service, Sidney R. Yates Building, 201 14th Street SW, Washington, DC 20250 in the Yates Training Room. Committee information and meeting details can be found at the following website: *https://www.fs.usda.gov/research/about/frac* or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: Written comments must be sent by email to *arthur.a.duggan@usda.gov* or via mail to David Lytle, Research and Development 2NW, USDA Forest Service, 201 14th Street SW, Washington, DC 20250. 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. EST November 10, 2023, and speakers can only register for one speaking slot. Oral comments must be sent by email to *arthur.a.duggan@usda.gov* or via mail to David Lytle, Research and Development 2NW, USDA Forest Service, 201 14th Street SW, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Arthur Duggan, Jr., Science Quality Services Program Manager, by phone at 510–542–0081 or email at *arthur.a.duggan@usda.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Discuss the current purpose of the Committee;
2. Discuss questions Federal forestry researchers are attempting to address and how they are addressing them; and
3. Identify topics for future meetings.

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 14 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 Committee. To ensure that the recommendations of the Committee 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: October 10, 2023.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2023–22867 Filed 10–16–23; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket No. RUS–23–Telecom–0012]

60-Day Notice of Proposed Information Collection: Electric System Emergency Restoration Plan; OMB Control No.: 0572–0140

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the United States Department of Agriculture (USDA), Rural Utilities Service (RUS) announces its' intention to request an extension of a currently approved information collection and invites comments on this information collection.

DATES: Comments on this notice must be received by December 18, 2023 to be assured of consideration.

ADDRESSES: Comments may be submitted by the Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the ''Search Field'' box, labeled ''Search for dockets and documents on agency actions,'' enter the following docket number: (RUS–23–Telecom–0012), and click ''Search.'' To submit public comments, select the ''Comment'' button. Before inputting your comments, you may also review the ''Commenter's Checklist'' (optional).

Insert your comments under the ''Comment'' title, click ''Browse'' to attach files (if applicable). Input your email address and select an identity category then click ''Submit Comment.'' Information on using *Regulations.gov,* including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''FAQ'' link.

FOR FURTHER INFORMATION CONTACT: Crystal Pemberton, Management Analyst, Branch 1, Rural Development Innovation Center—Regulations Management Division, United States Department of Agriculture, 1400 Independence Avenue SW, South Building, Washington, DC 20250–1522. Telephone: (202) 260–8621. Email: *Crystal.Pemberton@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see, 5 CFR 1320.8(d)). This notice identifies the following information collection that RUS is submitting to OMB as extension to an existing collection with Agency adjustment.

Title: Electric System Emergency Restoration Plan.

OMB Control Number: 0572–0140.

Expiration Date of Approval: March 31, 2024.

Type of Request: Extension of a currently approved information collection.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hour per response.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents: 41.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 20.5 hours.

Abstract: USDA Rural Development administers rural utilities programs through the Rural Utilities Service (Agency). The Agency manages loan programs in accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.,* as amended. One of the Agency's main objectives is to safeguard loan security. An important part of safeguarding loan security is to make sure Agency financed facilities are utilized responsibly, adequately operated, and maintained. Accordingly, RUS borrowers have a duty to RUS to maintain their respective systems. In performing this duty, borrowers further the purposes of the RE Act while also preserving the value of electric systems to serve as collateral for repayment of RUS assistance.

A substantial portion of the electric infrastructure of the United States resides in rural America and is maintained by rural Americans. RUS is uniquely coupled with the electric infrastructure of rural America and its electric borrowers serving rural America. To ensure that the electric infrastructure in rural America is adequately protected, electric borrowers conduct a Vulnerability and Risk Assessment (VRA) of their respective systems and utilize the results of this assessment to enhance an existing Emergency Restoration Plan (ERP) or to create an ERP. The VRA is utilized to identify specific assets and infrastructure owned or served by the electric utility, to determine the criticality and the risk level associated with the assets and infrastructure including a risk versus cost analysis, to identify threats and vulnerabilities, if present, to review existing mitigation procedures and to assist in the development of new and additional mitigating procedures, if necessary. The ERP provides written procedures detailing response and restoration efforts in the event of a major system outage resulting from a natural or man-made disaster. The annual exercise of the ERP ensures operability and employee competency and serves to identify and correct deficiencies in the existing ERP. The exercise may be implemented individually by a single borrower, or by an individual borrower as a participant in a multi-party (to include utilities, government agencies and other participants or combination thereof) tabletop execution or actual implementation of the ERP.

Electric borrowers maintain ERPs as part of prudent utilities practices. These ERPs are essential to continuous operation of the electric systems. Each electric applicant provides RUS with a written self-certification letter form that an ERP exists for the system and that an initial VRA has been performed as part of the application process.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(c) 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 appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Copies of this information collection can be obtained from Crystal Pemberton, Rural Development Innovation Center—Regulations Management Division, at (202) 260–8621. Email: *Crystal.Pemberton@usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Andrew Berke,

Administrator, Rural Utilities Service.

[FR Doc. 2023–22839 Filed 10–16–23; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Generic Clearance for Internet Panel Pretesting and Qualitative Survey Methods Testing

AGENCY: Census Bureau, Department of Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment on the proposed extension of the Generic Clearance for Internet Panel Pretesting and Qualitative Survey Methods Testing, prior to the submission of the information collection request (ICR) to OMB for approval.

DATES: To ensure consideration, comments regarding this proposed

information collection must be received on or before December 18, 2023.

ADDRESSES: Interested persons are invited to submit written comments by email to *adrm.pra@census.gov.* Please reference OMB Control Number 0607–0978 in the subject line of your comments. You may also submit comments, identified by Docket Number USBC–2023–0002, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Aleia Clark Fobia, U.S. Census Bureau, 4600 Silver Hill Road, Center for Behavioral Science Methods, Washington, DC 20233 or by calling 202–893–4091.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is committed to conducting research in a cost-efficient manner. The U.S. Census Bureau plans to request an extension of the current OMB approval to conduct a series of medium-scale internet-based tests, as a cost-efficient method of testing questions and contact strategies over the internet through different types of samples. Using internet panel pretesting, we can answer some research questions more thoroughly than in the small-scale testing, but less expensively than in the large-scale field test.

This research program will be used by the Census Bureau and survey sponsors to test alternative contact methods, including emails and text messages, improve online questionnaires and procedures, reduce respondent burden, and ultimately increase the quality of data collected in the censuses and surveys. We will use the clearance to conduct experimental pretesting of decennial and demographic census and survey questionnaires prior to fielding them as well as communications and/or marketing strategies and data dissemination tools for the Census Bureau. The primary method of identifying measurement problems with the questionnaire or survey procedure is split panel tests. This will encompass both methodological and subject matter research questions that can be tested on a medium-scale internet panel.

This research program will also be used by the Census Bureau for remote usability testing of electronic interfaces and to perform other qualitative analyses such as respondent debriefings. An advantage of using remote, medium-scale testing is that participants can test products at their convenience using their own equipment, as opposed to using Census Bureau-supplied computers. A diverse participant pool (geographically, demographically, or economically) is another advantage. Remote usability testing would use click through rates and other paradata, accuracy and satisfaction scores, and written qualitative comments to determine optimal interface designs and to obtain feedback from respondents.

The public is currently offered an opportunity to participate in this research remotely, by signing up for an online research panel. If a person opts in, the Census Bureau will occasionally email (or text, if applicable) the person an invitation to complete a survey for one of our research projects. Invited respondents will be told the topic of the survey, and how long it will take to complete it. Under this clearance, we will also conduct similar-scale and similarly designed research using other email lists to validate preliminary findings and expand the research.

II. Method of Collection

Split sample experiments. This involves testing alternative versions of questionnaires, invitations to questionnaires (*e.g.,* emails or text messages), or websites, at least some of which have been designed to address problems identified in draft versions or versions from previous waves. The use of multiple questionnaires, invitations, or websites, randomly assigned to permit statistical comparisons, is the critical component here; data collection will be via the internet. Comparison of revised questionnaires (or invitations) against a control version, preferably, or against each other facilitates statistical evaluation of the performance of alternative versions of the questionnaire (or invitation or website).

The number of versions tested and the number of cases per version will depend on the objectives of the test. We cannot specify with certainty a minimum panel size, although we would expect that no questionnaire versions would be administered to less than fifty respondents.

Split sample tests that incorporate methodological questionnaire design experiments will have a larger maximum sample size (up to several hundred cases per panel) than other pretest methods. This will enable the detection of statistically significant differences and facilitate methodological experiments that can extend questionnaire design knowledge more generally for use in a variety of Census Bureau data collection instruments.

Usability Interviews: This method involves getting respondent input to aid in the development of automated questionnaires and websites and associated materials. The objective is to identify problems that keep respondents from completing automated questionnaires accurately and efficiently with minimal burden, or that prevent respondents from successfully navigating websites and finding the information they seek. Remote usability testing may be conducted under this clearance, whereby a user would receive an invitation to use a website or survey, then answer targeted questions about that experience.

Qualitative Interviews: This method involves one-on-one (or sometimes group) interviews in which the respondent is typically asked questions about survey content areas, survey questions or the survey process. A number of different techniques may be involved, including cognitive interviews and focus groups. The objective is to identify problems of ambiguity or misunderstanding, or other difficulties respondents may have answering survey questions in order to improve the information ultimately collected in large scale surveys and censuses.

Data collection for this project is authorized under the authorizing legislation for the questionnaire being tested. This may be Title 13, Sections 131, 141, 161, 181, 182, 193, and 301 for Census Bureau-sponsored surveys, and Title 13, Section 8(b), and Title 15 for surveys sponsored by other Federal agencies. We do not now know what other titles will be referenced, since we do not know what survey questionnaires will be pretested during the course of the clearance.

Literature on and considerations about the use of internet samples for this type of work have been thoroughly covered by a Task Force commissioned by the American Association for Public Opinion Research and are well documented there (Baker, et al., 2013).

The information collected in this program of developing and testing

questionnaires will be used by staff from the Census Bureau and sponsoring agencies to evaluate and improve the quality of the data in the surveys and censuses that are ultimately conducted. Because the questionnaires being tested under this clearance are still in the process of development, the data that result from these collections are not considered official statistics of the Census Bureau or other Federal agencies. Data will be included in research reports prepared for sponsors inside and outside of the Census Bureau. The results may also be prepared for presentations related to survey methodology at professional meetings or publications in professional journals.

III. Data

OMB Control Number: 0607–0978.
Form Number(s): TBD.
Type of Review: Regular submission, Request for an Extension, without Change, of a Currently Approved Collection.
Affected Public: Individuals or households.
Estimated Number of Respondents: 67,600.
Estimated Time per Response: 15 minutes.
Estimated Total Annual Burden Hours: 16,900.
Estimated Total Annual Cost to Public: $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)
Respondent's Obligation: Voluntary.
Legal Authority: Data collection for this project is authorized under the authorizing legislation for the questionnaire being tested. This may be Title 13, Sections 131, 141, 161, 181, 182, 193, and 301 for Census Bureau-sponsored surveys, and Title 13 and 15 for surveys sponsored by other Federal agencies. We do not now know what other titles will be referenced, since we do not know what survey questionnaires will be pretested during the course of the clearance.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include, or summarize, each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–22896 Filed 10–16–23; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Direct Investment Surveys: BE–15, Annual Survey of Foreign Direct Investment in the United States

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on 08/09/2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: Bureau of Economic Analysis (BEA), Department of Commerce.

Title: Annual Survey of Foreign Direct Investment in the United States.

OMB Control Number: 0608–0034.
Form Number: BE–15.
Type of Request: Revision of a currently approved collection.
Number of Respondents: 6,550 annually, of which approximately 3,350 file A forms, 1,700 file B forms, 1,000 file C forms, and 500 file Claim for Exemption forms.
Average Hours per Response: 24.3 hours per respondent (159,038 hours/6,550 respondents) is the average but may vary considerably among respondents because of differences in company size and complexity.
Burden Hours: 159,038 hours. Total annual burden is calculated by multiplying the estimated number of submissions of each form by the average hourly burden per form, which is 44.75 hours for the A form, 3.75 hours for the B form, 2.25 hours for the C form, and 1 hour for the Claim for Exemption form.
Needs and Uses: The Annual Survey of Foreign Direct Investment in the United States (BE–15) obtains sample data on the financial structure and operations of foreign-owned U.S. business enterprises. The data are needed to provide reliable, useful, and timely measures of foreign direct investment in the United States to assess its impact on the U.S. economy. The sample data are used to derive universe estimates in non-benchmark years from similar data reported in the BE–12 benchmark survey, which is conducted every five years. The data collected include balance sheets; income statements; property, plant, and equipment; employment and employee compensation; merchandise trade; sales of goods and services; taxes; and research and development activity for the U.S. operations. In addition to these national data, several data items are collected by the state, including employment and property, plant, and equipment.
Affected Public: Businesses or other for-profit organizations.
Frequency: Annual.
Respondent's Obligation: Mandatory.
Legal Authority: International Investment and Trade in Services Survey Act (Pub. L. 94–472, 22 U.S.C. 3101–3108, as amended).

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/*

public/do/PRAMain. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0608–0034.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–22813 Filed 10–16–23; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on November 1, 2023, 9:00 a.m., Eastern Standard Time, in the Herbert C. Hoover Building, Room 3884, 1401 Constitution Avenue NW, Washington, DC (enter through Main Entrance on 14th Street between Constitution and Pennsylvania Avenues). The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology. The purpose of the meeting is to have Committee members and U.S. Government representatives mutually review updated technical data and policy-driving information that has been gathered.

Agenda

Open Session

1. Welcome and Introductions
2. Open Business
3. Industry Wassenaar Proposals for 2024

Closed Session

Discussion of matters determined to be exempt from the open meeting and public participation requirements found in sections 1009(a)(1) and 1009(a)(3) of the Federal Advisory Committee Act (FACA) (5 U.S.C. 1001–1014). The exemption is authorized by section 1009(d) of the FACA, which permits the closure of advisory committee meetings, or portions thereof, if the head of the agency to which the advisory committee reports determines such meetings may be closed to the public in accordance with subsection (c) of the Government in the Sunshine Act (5 U.S.C. 552b(c)). In this case, the applicable provisions of 5 U.S.C. 552b(c) are subsection 552b(c)(4), which permits closure to protect trade secrets and commercial or financial information that is privileged or confidential, and subsection 552b(c)(9)(B), which permits closure to protect information that would be likely to significantly frustrate implementation of a proposed agency action were it to be disclosed prematurely. The closed session of the meeting will involve committee discussions and guidance regarding U.S. Government strategies and policies.

The open session will be accessible via teleconference. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than October 25, 2023.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on July 5, 2023, pursuant to 5 U.S.C. chapter 10 of the FACA, (5 U.S.C. 1009(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. 1009(a)(1) and 1009(a)(3). The remaining portions of the meeting will be open to the public.

For more information, contact Ms. Springer via email.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2023–22895 Filed 10–16–23; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee (SITAC) will meet on Tuesday, October 31, 2023, at 1:00 p.m., Eastern Daylight Time, in the Herbert C. Hoover Building, Room 3884, 1401 Constitution Avenue NW, Washington, DC (enter through Main Entrance on 14th Street between Constitution and Pennsylvania Avenues). This meeting will be virtual. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology. The purpose of the meeting is to have Committee members and U.S. Government representatives mutually review updated technical data and policy-driving information that has been gathered.

Agenda

Open Session

1. Welcome and Introductions.
2. Remarks from the Bureau of Industry and Security Management.
3. Industry Presentations.
4. New Business.

Closed Session

5. Discussion of matters determined to be exempt from the open meeting and public participation requirements found in Sections 1009(a)(1) and 1009(a)(3) of the Federal Advisory Committee Act (FACA) (5 U.S.C. 1001–1014). The exemption is authorized by section 1009(d) of the FACA, which permits the closure of advisory committee meetings, or portions thereof, if the head of the agency to which the advisory committee reports determines such meetings may be closed to the public in accordance with subsection (c) of the Government in the Sunshine Act (5 U.S.C. 552b(c)). In this case, the applicable provisions of 5 U.S.C. 552b(c) are subsection 552b(c)(4), which permits closure to protect trade secrets and commercial or financial information that is privileged or confidential, and subsection 552b(c)(9)(B), which permits closure to protect information that would be likely to significantly frustrate implementation of a proposed agency action were it to be disclosed prematurely. The closed session of the meeting will involve committee discussions and guidance regarding U.S. Government strategies and policies.

The open session will be accessible via teleconference. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* 202–482–2813, no later than October 24, 2023.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit

written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 3, 2023, pursuant to 5 U.S.C. 1009(d) of the FACA, that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. 1009(a)(1) and 1009(a)(3). The remaining portions of the meeting will be open to the public.

For more information, contact Ms. Springer via email.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2023–22893 Filed 10–16–23; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD464]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of hybrid meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Bering Sea Fishery Ecosystem Plan Climate Change Taskforce (BSFEP CC) will meet November 1, 2023 through November 2, 2023.

DATES: The meeting will be held on Wednesday, November 1, 2023, from 1 p.m. to 5 p.m. and on Thursday, November 2, 2023, from 9 a.m. to 5 p.m., Pacific time.

ADDRESSES:

Meeting address: The meeting will be a hybrid meeting. The in-person component of the meeting will be held at the Alaska Fishery Science Center in Room 2079, 7600 Sand Point Way NE, Building 4, Seattle, WA 98115.

If you plan to attend in-person you need to notify Diana Stram (*diana.stram@noaa.gov*) at least two days prior to the meeting (or two weeks prior if you are a foreign national). You will also need a valid U.S. Identification Card. If you are attending virtually, join the meeting online through the link at *https://meetings.npfmc.org/Meeting/Details/3016.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave., Suite 400, Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting are given under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: Dr. Diana Stram, Council staff; phone; (907) 271–2809 and email: *diana.stram@noaa.gov.* For technical support, please contact our administrative staff; email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Wednesday, November 1, 2023, Through Thursday, November 2, 2023

The agenda will include: (a) an overview on Climate ecosystems and fisheries initiative; (b) overview on IRA funding; (c) overview of Alaska Climate Integrated Modeling and Alaska Dashboard Adaptation Planning Tools; (d) summary of CCTF member survey feedback on climate scenario planning workshop plans; (e) recommended approach for Climate Scenario Planning Workshop; (f) research priorities; (g) future plans; and (h) and other business. The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/3016* prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/3016.*

Public Comment

Public comment letters will be accepted and should be submitted electronically to *https://meetings.npfmc.org/Meeting/Details/3016.*

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

Dated: October 11, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–22827 Filed 10–16–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–P–2021–0052]

Grant of Interim Extension of the Term of U.S. Patent No. 7,199,162; GRAFAPEX™ (Treosulfan)

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of interim patent term extension.

SUMMARY: The United States Patent and Trademark Office has issued an order granting a one-year interim extension of the term of U.S. Patent No. 7,199,162 ('162 patent).

FOR FURTHER INFORMATION CONTACT: Raul Tamayo, Senior Legal Advisor, Office of Patent Legal Administration, at 571–272–7728 or *raul.tamayo@uspto.gov.*

SUPPLEMENTARY INFORMATION: 35 U.S.C. 156 generally provides that the term of a patent may be extended for a period of up to five years, if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review. 35 U.S.C. 156(d)(5) generally provides that the term of such a patent may be extended for no more than five interim periods of up to one year each, if the approval phase of the regulatory review period (RRP) is reasonably expected to extend beyond the expiration date of the patent.

On August 28, 2023, Medac Gesellschaft fuer Klinische Spezialpraparate mbH, the owner of record of the '162 patent, timely filed an application under 35 U.S.C. 156(d)(5) for a third interim extension of the term of the '162 patent. The '162 patent claims a method of using the human drug product known by the tradename GRAFAPEX™ (treosulfan). The application for interim patent term extension indicates that a RRP as described in 35 U.S.C. 156(g)(1)(B)(ii) began for GRAFAPEX™ (treosulfan) and is ongoing before the Food and Drug Administration for permission to market and use the product commercially.

Review of the interim patent term extension application indicated that, except for permission to market or use the product commercially, the '162 patent would be eligible for an extension of the patent term under 35 U.S.C. 156. Because it was apparent that the RRP would continue beyond the twice-extended expiration date of the '162 patent, *i.e.,* October 12, 2023, a third interim extension of the patent term under 35 U.S.C. 156(d)(5) was appropriate.

A third interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 7,199,162 was granted on October 10, 2023, for a period of one year from the twice-extended expiration date of the '162 patent.

Brian Hanlon,

Acting Deputy Commissioner for Patents, United States Patent and Trademark Office.

[FR Doc. 2023–22836 Filed 10–16–23; 8:45 am]

BILLING CODE 3510–16–P

CONSUMER FINANCIAL PROTECTION BUREAU

Supervisory Highlights Junk Fees Update Special Edition, Issue 31, Fall 2023

AGENCY: Consumer Financial Protection Bureau.

ACTION: Supervisory Highlights.

SUMMARY: The Consumer Financial Protection Bureau (CFPB or Bureau) is issuing its thirty first edition of Supervisory Highlights.

DATES: The findings included in this report cover examinations in the areas of deposits, auto servicing, and remittances that generally were completed between February 2023 and August 2023. The report also describes risks identified in connection with payment platforms that parents, guardians, and students use to pay for school lunches.

FOR FURTHER INFORMATION CONTACT: Jaclyn Sellers, Senior Counsel, at (202) 435–7449. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

1. Introduction

As part of its emphasis on fair competition, the Consumer Financial Protection Bureau (CFPB) has launched an initiative, consistent with its legal authority, to scrutinize junk fees charged by banks and financial companies. Junk fees are typically not subjected to the normal forces of competition, leading to excessive costs for services that a consumer may not even want. For example, certain banks and financial companies might hide these unavoidable or surprise charges or disclose them only at a later stage in the consumer's purchasing process, if at all.

The CFPB has observed that supervised institutions have started to compete more when it comes to fees. In recent years, multiple banks have announced they were eliminating overdraft fees or otherwise updating their policies to be more consumer friendly.[1] And many have announced that they are eliminating non-sufficient fund (NSF) fees on consumer deposit accounts.[2]

Supervision continues to focus significant resources on identifying and eliminating junk fees charged by supervised institutions. Significantly, financial institutions are refunding over $120 million to consumers for unanticipated overdraft fees and unfair NSF fees. This special edition of *Supervisory Highlights* updates the public on supervisory work completed since the CFPB published the March 2023 *Supervisory Highlights* Junk Fees Special Edition. In total, for the topics covered in this edition, Supervision's work has resulted in institutions refunding over $140 million to consumers.

The findings included in this report cover examinations in the areas of deposits, auto servicing, and remittances that generally were completed between February 2023 and August 2023.[3] The report also describes risks identified in connection with payment platforms that parents, guardians, and students use to pay for school lunches. Additionally, consistent with the statutory requirement for Supervision to identify and consider ''risks to consumers'' throughout its supervisory program, Supervision has obtained data about certain deposit account fee practices and is sharing key data points that shed light on risks to consumers. To maintain the anonymity of the supervised institutions discussed in *Supervisory Highlights,* references to institutions generally are in the plural and related findings may pertain to one or more institutions.

We invite readers with questions or comments about *Supervisory Highlights* to contact us at *CFPB_Supervision@cfpb.gov.*

2. Supervisory Observations

2.1 Deposits

In recent examinations of depository institutions and service providers, Supervision has reviewed certain fees related to deposit accounts to assess whether supervised entities have engaged in any unfair, deceptive, or abusive acts or practices (UDAAPs) prohibited by the Consumer Financial Protection Act of 2010 (CFPA).[4] Examiners have focused on NSF and overdraft fees in particular and have reviewed statement fees and surprise depositor fees as well. Examiners also have engaged in follow-up work regarding pandemic relief benefits.

2.1.1 Assessing Multiple NSF Fees for the Same Transaction

Supervision continued examinations of institutions to review for UDAAPs in connection with charging consumers NSF fees, especially with respect to ''re-presentments.'' [5] A re-presentment occurs when, after declining a transaction because of insufficient funds and assessing an NSF fee for the transaction, the consumer's account-holding institution returns the transaction to the merchant's depository institution, and the merchant presents the same transaction to the consumer's account-holding institution for payment again. In some instances, when the consumer's account remains insufficient to pay for the transaction upon re-presentment, the consumer's account-holding institution again returns the transaction to the merchant and assesses another NSF fee for the transaction, without providing consumers a reasonable opportunity to prevent another fee after the first failed presentment attempt. Absent restrictions on the assessment of NSF fees by the consumer's account-holding institution, this cycle can occur multiple times, and consumers may be charged multiple fees for a single transaction.

Core Processor Practices

Core processors provide critical deposit, payment, and data processing services to many supervised institutions, and the system functionality that these entities develop drives many fee practices, including NSF fee practices. Supervision has examined core processors in their capacity as service providers to covered persons providing deposit services.

Examiners concluded that, in the offering and providing of core service platforms, core processors engaged in an unfair act or practice by contributing to the assessment of unfair NSF fees on re-presented items. An act or practice is

[1] Banks' Overdraft/NSF Fee Revenues Evolve Along With Their Policies, (July 20, 2023), available at: *https://www.consumerfinance.gov/about-us/blog/banks-overdraft-nsf-fee-revenues-evolve-along-with-their-policies/.* Some banks have announced significant changes while others have made smaller or no changes.

[2] *Id.*

[3] If a supervisory matter is referred to the Office of Enforcement, Enforcement may cite additional violations based on these facts or uncover additional information that could impact the conclusion as to what violations may exist.

[4] 12 U.S.C. 5531(c), 5536.

[5] Some depository institutions charge a NSF fee when a consumer pays for a transaction with a check or an ACH transfer and the transaction is presented for payment, but there is not a sufficient balance in the consumer's account to cover the transaction.

unfair when: (1) it causes or is likely to cause substantial injury to consumers; (2) the injury is not reasonably avoidable by consumers; and (3) the injury is not outweighed by countervailing benefits to consumers or to competition.[6] Consumers incurred substantial injury in the form of the relevant re-presentment NSF fees. Consumers were also at increased risk of incurring additional fees on subsequent transactions caused by the re-presentment NSF fees, which lowered consumers' account balances. Injurious fees were foreseeable in light of the system limitations, as the core processor platforms did not allow financial institutions to refrain from charging more than one NSF fee per item without discontinuing NSF fees altogether or manually waiving individual fees. These fees were not reasonably avoidable by consumers, where consumers did not have a meaningful opportunity to prevent another fee after the first failed representment attempt. The consumer injury at issue was not outweighed by countervailing benefits to consumers or competition.

To address these findings, the core processors enhanced the systems they provide to financial institutions to facilitate their implementation of policies to eliminate NSF re-presentment fees. Additionally, Supervision intends to review the practices of financial institutions seeking payment from the consumer's financial institution, often called Originating Depository Financial Institutions, to ensure that represented transactions are coded properly to enable systems to identify the relevant transactions efficiently as well as refrain from charging NSF fees on those transactions.

Supervised Institutions' Practices

In other examinations, Supervision found that financial institutions engaged in unfair acts or practices by charging consumers re-presentment NSF fees without affording the consumer a meaningful opportunity to prevent another fee after the first failed representment attempt.[7] The assessment of re-presentment NSF fees caused substantial monetary injury to consumers, totaling tens of millions of dollars that will be refunded to consumers because of examinations during this time period. These injuries were not reasonably avoidable by consumers, regardless of disclosures in account-opening documents, because consumers did not have a reasonable opportunity to prevent another fee after the first failed presentment attempt. And the injuries were not outweighed by countervailing benefits to consumers or competition.

Consistent with the CFPB's longtime position regarding responsible business conduct, institutions proactively developed plans to remediate consumers for assessed re-presentment NSF fees.[8] However, some financial institutions used incomplete reports that only captured certain re-presentment NSF fees charged to consumers. Examiners found that these reports captured consumer accounts that were charged NSF fees on checks only, or on both checks and ACH transactions. Yet they omitted consumer accounts that were assessed NSF fees solely on ACH transactions. After examiners identified this issue, institutions reviewed their remediation methodologies to ensure coverage of both ACH and check re-presentments.

In total, institutions are refunding over $22 million to consumers in response to Supervision directives since CFPB initiated this set of work in 2022. Additionally, the vast majority of institutions reported plans to stop charging NSF fees altogether.

2.1.2 Unfair Unanticipated Overdraft Fees

Supervision continued to cite unfair acts or practices at institutions that charged consumers for unfair unanticipated overdraft fees, such as Authorize-Positive Settle-Negative (APSN) overdraft fees, during this time period. APSN overdraft fees occur when financial institutions assess overdraft fees for debit card or ATM transactions where the consumer had a sufficient available balance at the time the consumer authorized the transaction, but given the delay between authorization and settlement the consumer's account balance is insufficient at the time of settlement. This change in balance can occur for many reasons, such as intervening authorizations resulting in holds, settlement of other transactions, timing of presentment of the transaction for settlement, and other complex practices relating to transaction processing order. Supervision's recent matters have built on work described in Winter 2023 *Supervisory Highlights,* and the CFPB previously discussed this practice in Consumer Financial Protection Circular 2022–06, Unanticipated Overdraft Fee Assessment Practices.[9]

Across its examinations, Supervision has identified tens of millions of dollars in injury to thousands of consumers that occurred whether supervised institutions used the consumer's available or ledger balance for fee decisioning. Consumers could not reasonably avoid the substantial injury, irrespective of account opening disclosures. The consumer injury was not outweighed by countervailing benefits to consumers or competition. To remedy the violation, these institutions ceased charging APSN overdraft fees, and will conduct a lookback and issue remediation to injured consumers.

In total, financial institutions are refunding over $98 million to consumers since this work began in 2022. In recent examinations, and consistent with Supervision's earlier work, supervised institutions that had reported to examiners that they engaged in APSN overdraft fee practices now report that they will stop doing so.

2.1.3 Supervisory Data Requests on Overdraft, NSF, and Other Overdraft-Related Fees

As part of the CFPB's ongoing supervisory monitoring related to overdraft practices, Supervision obtained data from several institutions related to fees assessed over the course of 2022, including per item overdraft and NSF fees, sustained overdraft fees, and transfer fees (collectively, ''overdraft-related fees'').[10] Supervision also obtained account-level and transaction-level data from several institutions regarding overdraft fees assessed over a one-month period on non-recurring debit card and ATM transactions.[11] Some of the key observations gleaned from the data are discussed below. Please note that the

[6] 12 U.S.C. 5531(c), 5536.

[7] Supervision's work is consistent with the CFPB's public action against Bank of America, N.A. See CFPB Consent Order 2023–CFPB–0006, In the Matter of Bank of America, N.A. (July 11, 2023), available at: *https://www.consumerfinance.gov/enforcement/actions/bank-of-america-n-a-fees/.*

[8] Responsible Business Conduct: Self-Assessing, Self-Reporting, Remediating, and Cooperating, (March 6, 2020), available at: *https://www.consumerfinance.gov/compliance/supervisory-guidance/bulletin-responsible-business-conduct/.*

[9] *Supervisory Highlights:* Junk Fees Special Edition, Issue 29, 3–6 (March 2023) available at: *https://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-junk-fees-special-edition-issue-29-winter-2023/;* Consumer Financial Protection Circular 2022–06, Unanticipated Overdraft Fee Assessment Practices, at 8–12 (Oct. 26, 2022) available at: *https://www.consumerfinance.gov/compliance/circulars/consumer-financial-protection-circular-2022-06-unanticipated-overdraft-fee-assessment-practices/.*

[10] See 12 U.S.C. 5515(b)(1).

[11] Neither the account-level nor the transaction-level data contain any directly-identifying personal information. Because the data used in this analysis are Confidential Supervisory Information, this discussion only presents results that are aggregated and does not identify specific institutions.

discussion below does not present all of the CFPB's observations or data obtained and that the CFPB's analysis of data provided by institutions is ongoing.

Overdraft Coverage and Fee Amounts per Overdraft Transaction

During the time periods reviewed, the relevant institutions charged per-item overdraft fees that ranged from $15 per item to $36 per item. The amount of overdraft coverage provided for consumer transactions on which these fees were charged often was disproportionately small. For example, in these data sets, the median amount of overdraft coverage extended on one-time debit card and ATM transactions ranged from $14 to $30. In fact, the percentage of transactions for which the amount of overdraft coverage provided was less than the relevant per-item overdraft fee ranged from 32% to 74% across institutions.

Incident and Distribution of Overdraft, NSF, and Other Overdraft-Related Fees

Supervision obtained institution-level data segmented by certain account characteristics, including: opt-in status,[12] *i.e.* accounts opted-in to overdraft services for one-time debit card and ATM transactions (''opted-in accounts'') versus accounts not opted-in to such overdraft services (''not opted-in accounts''), and average account balance, *i.e.* accounts with an average balance at or less than $500 (''lower balance accounts'') versus accounts with an average balance greater than $500 (''higher balance accounts''). Across all institutions monitored, most accountholders do not incur overdraft-related fees. This data set also showed that overdraft-related fees constituted the majority of the total deposit account fees that consumers incurred and an even greater proportion of the total fees assessed to lower balance accounts and opted-in accounts.

In 2022, in this data set, overdraft and NSF fees comprised 53% of all fees that the institutions charged to consumer checking accounts and nearly three-quarters of all fees charged to lower balance accounts and opted-in accounts. Not surprisingly then, while accountholders overall each paid approximately $65 per year in overdraft and NSF fees on average, opted-in accounts and lower balance accountholders paid over $165 and $220 in overdraft and NSF fees on average per year, respectively. A relatively small fraction of bank customers had a lower average balance but paid the majority of overdraft and NSF fees which is consistent with findings in prior research conducted by the CFPB. Indeed, across all institutions in aggregate, one-fifth of accounts were lower-balance accounts, but these accounts paid 68% of per-item overdraft fees assessed and 77% of the per-item NSF fees assessed. In fact, for at least one institution, over half of per-item overdraft fees assessed and over one-third of per-item NSF fees assessed were charged to lower balance, opted-in accounts even though only five percent of the institution's accounts fell into this category.

Data on the frequency of overdraft transactions and fees showed that the number of overdraft transactions and fees varies substantially with opt-in status. Accounts that overdraft most frequently (12 or more overdraft fees per year) were nearly five times as prevalent among opted-in accounts compared to not opted-in accounts.

Account Closure and Charge-Offs Attributable to Overdraft Transactions and Overdraft-Related Fees

Supervision also obtained data on account closure attributable to unpaid negative balances and overdraft transactions and the amount of charged-off negative balances attributable to overdraft transactions (excluding fees). With respect to account closure, Supervision found that, across all institutions, most accounts were closed involuntarily and half of such accounts were closed due to an unpaid negative balance attributable to overdraft transactions and overdraft-related fees.

In aggregate, losses to institutions in the form of charge-offs were evenly split between opted in accounts and not opted in accounts. Although overdraft transactions initiated by lower balance accounts were more likely to be charged-off, the average amount charged-off per lower balance account was roughly equal to the amount charged-off per higher balance account and was actually lower at some institutions. Notably, overdraft-related fees themselves generally constituted one-third of the total amount of negative balances charged-off. In fact, overdraft-related fees constituted as much as two-thirds of the total amount of all overdraft charge-offs by at least one institution.

2.1.4 Unfair Statement Fees

When supervised institutions send account statements to customers that provide information about their deposit accounts during the month, they generally deliver these statements to consumers in paper form, through the U.S. mail, unless consumers elect to receive the statements in verified and secure electronic form, whether by email or through the institution's website or its mobile application.

In recent examinations, Supervision observed that institutions charged fees for the printing and delivery of paper statements, including additional fees when they mailed a statement that was returned undelivered. Supervision found that, in certain instances, institutions did not print or attempt to deliver paper statements but continued to assess paper statement fees and returned mail fees each month.

Supervision found that institutions engaged in an unfair act or practice by assessing paper statement fees and returned mail fees for paper statements they did not attempt to print and deliver. Assessing such delivery-related statement fees for undelivered statements caused substantial injury to consumers. Indeed, in one instance, a senior citizen discovered that her account was almost entirely depleted because an account statement had been returned undelivered five years prior and the institution had been assessing statement fees each month since. Consumers could not reasonably avoid this injury because they had no reason to anticipate that such fees would be assessed. The injury was also not outweighed by countervailing benefits to consumers or competition because assessing delivery-related fees for undelivered statements provides no benefit to consumers and does not actually compensate institutions for any costs incurred.

In response to these findings, the institutions stopped assessing paper statements and returned mail fees for paper statements they did not attempt to deliver and will refund the millions of dollars in such fees that were charged to hundreds of thousands of consumers.

2.1.5 Surprise Depositor Fees

Surprise depositor fees, also known as returned deposit item fees, are fees assessed to consumers when an institution returns as unprocessed a check that the consumer attempted to deposit into his or her checking account. An institution might return a check for several reasons, including

[12] Institutions are prohibited from charging a fee for paying non-recurring debit card and ATM transactions into overdraft unless a consumer affirmatively opts-in to overdraft coverage for these transactions. *See* 12 CFR 1005.17(b)(1). Institutions are not expressly prohibited from charging an NSF fee on such transactions, however, the Federal Reserve Board signaled that such fees may violate the FTC Act. See 74 FR 59033, 59041 (Nov. 17, 2009). This opt-in requirement does not extend to other transaction types (*e.g.,* ACH and check transactions) and thus non-opted in accounts may be assessed overdraft fees for such transactions.

insufficient funds in the originator's account, a stop payment order, or problems with the information on the check.

In October 2022, the CFPB issued a compliance bulletin stating that it is likely an unfair act or practice for an institution to have a blanket policy of charging return deposit item fees anytime that a check is returned unpaid, irrespective of the circumstances or patterns of behavior on the account.[13] The CFPB stated that these fees cause substantial monetary injury for each returned item, which consumers likely cannot reasonably avoid because they lack information about and control over whether a check will clear.[14] And it may be difficult to show that this injury from blanket return deposit item policies is outweighed by countervailing benefits to consumers or to competition.[15]

In recent examinations, Supervision has evaluated the returned deposit item fee practices at a number of institutions. Most of the examined institutions have advised the CFPB that they have eliminated returned deposit item fees entirely. Others have stated that they are in the process of doing so. As previewed in the October 2022 bulletin, Supervision has not sought to obtain monetary relief for return deposit item fees assessed prior to November 1, 2023. But Supervision will continue to monitor the relevant practices for compliance with the law and may direct remediation from institutions that continue charging unfair returned deposit item fees.[16]

2.1.6 Treatment of Pandemic Relief Benefits

As described in past editions of *Supervisory Highlights,* Supervision conducted examination work to evaluate how financial institutions handled pandemic relief benefits deposited into consumer accounts.[17] Specifically, the CFPB performed a broad assessment centered on whether consumers may have lost access to pandemic relief benefits, namely Economic Impact Payments and unemployment insurance benefits, as a result of financial institutions' garnishment or setoff practices.[18] Further follow-up reviews identified many supervised institutions that risked committing an unfair act or practice in violation of the CFPA in connection with their treatment of pandemic relief benefits which resulted in consumers being charged improper fees.[19]

In response to these findings, the institutions (1) refunded protected Economic Impact Payments improperly taken from consumers to set off fees or amounts owed to the institution; (2) refunded garnishment-related fees assessed to consumers for improper garnishment of Economic Impact Payments; and (3) reviewed, updated, and implemented policies and procedures to ensure the institution complies with applicable State and territorial protections regarding its setoff and garnishment practices.

To date, Supervision has identified over $1 million in consumer injury in response to these examination findings, with institutions providing redress to over 6,000 consumers. Thus far, supervised institutions have provided redress of approximately $685,000 to consumers for improper setoff of Economic Impact Payments and approximately $315,000 for improper garnishment-related fees. Most supervised institutions have reported making substantial changes to their policies and procedures to prevent this type of consumer injury in the future.

2.2 Auto Servicing

Examiners also reviewed fee practices in connection with auto loans. Through this work, Supervision continues to identify unfair acts or practices related to auto servicers' handling of refunds of add-on products after loans terminate early. Specifically, some servicers failed to ensure consumers received refunds, while others did so but miscalculated the refund amounts.

When consumers purchase an automobile, auto dealers and finance companies offer optional, add-on products that consumers can purchase. Auto dealers and finance companies often charge consumers for the entire cost of any add-on products at origination, adding the cost of the add-on product as a lump sum to the total amount financed. As a result, consumers typically make payments on these products throughout the loan term, even if the product expires earlier.

2.2.1 Overcharging for Add-On Products After Early Loan Termination

Examiners have continued to review servicer practices related to add-on product charges where loans terminated early through payoff or repossession.[20] When loans terminate early, certain products no longer offer any possible benefit to consumers; whether a product offers a benefit depends on the type of product and reason for early termination. For example, many vehicle service contracts continue to provide possible benefits to consumers after early payoff but not after repossession, while a credit product (such as Guaranteed Asset Protection (GAP) or credit-life insurance) will not offer any possible benefits after either early payoff or repossession.

Examiners found auto servicers engaged in unfair acts or practices because consumers suffered substantial injury when servicers failed to ensure they received refunds for add-on products following early loan termination; consumers were essentially required to pay for services they could no longer use, as the relevant products (including vehicle service contracts, GAP, or credit-life insurance) terminated either when the loan contract was terminated or provided no possible benefits after the consumer lost use of the vehicle. Consumers could not reasonably avoid the injury because they had no control over the servicers' refund processing actions. When servicers present consumers with payoff amounts, deficiency balances, or refunds, consumers may have no reason to know that the amounts include unearned add-on product costs. And reasonable consumers might not apply for refunds themselves because they may be unaware that the contract provided that they could do so. Examiners concluded that the injury was not outweighed by any countervailing benefits to consumers or competition.

In response to these findings, servicers are remediating impacted consumers more than $20 million and

[13] Consumer Financial Protection Bulletin 2022–06, Unfair Returned Deposited Item Fee Assessment Practices (Oct. 26, 2022), available at: *https://www.consumerfinance.gov/compliance/supervisory-guidance/cfpb-bulletin-2022-06-unfair-returned-deposited-item-fee-assessment-practices/.*

[14] *Id.* at 3–4.

[15] *Id.* at 5–6.

[16] *Id.* at 3 n.1.

[17] *Supervisory Highlights,* Issue 28 (Fall 2022), available at: *https://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-issue-28-fall-2022/. Supervisory Highlights,* Issue 23 (Winter 2021), available at: cfpb_supervisory-highlights_issue-23_2021-01.pdf (*consumerfinance.gov*).

[18] *Supervisory Highlights,* Issue 23 (Winter 2021), available at: *https://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-covid-19-prioritized-assessments-special-edition-issue-23/.*

[19] *Supervisory Highlights,* Issue 28 (Fall 2022), available at *https://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-issue-28-fall-2022/.*

[20] The CFPB previously discussed similar issues with add-on product refunds after repossession and early payoff in *Supervisory Highlights,* Issue 26, Spring 2022, available at: *https://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-issue-26-spring-2022/;* Consumer Financial Protection Bureau (*consumerfinance.gov*) and *Supervisory Highlights,* Issue 28, Fall 2023, available at: *https://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-issue-28-fall-2022/.*

implementing processes to ensure consumers receive refunds for add-on products that no longer offer any possible benefit to consumers.

2.2.2 Miscalculating Refunds for Add-On Products After Early Loan Termination

Examiners also have continued to identify problems with the calculation of unearned fee amounts after loan termination.[21] Examiners found that servicers engaged in unfair acts or practices when they used miscalculated add-on product refund amounts after loans terminated early. These servicers had a policy to obtain add-on product refunds and relied on service providers to calculate the refund amounts. The service providers miscalculated the refunds due, either because they used the wrong amount for the price of the add-on product or because they deducted fees (such as cancellation fees) that were not authorized under the add-on product contract; the servicers then used these miscalculated refund amounts.

Examiners found that servicers engaged in an unfair act or practice when they used miscalculated add-on product refund amounts after loans terminated early. Using miscalculated refund amounts caused, or was likely to cause, substantial injury because servicers either communicated inaccurately higher deficiency balances or provided smaller refunds than warranted after early loan termination. Consumers could not reasonably avoid the injury because they were not involved in the servicers' calculation process, and it is reasonable for consumers to assume that the calculations are accurate. And the injury was not outweighed by countervailing benefits to consumers or competition.

In response to these findings, servicers are remediating impacted consumers and improving monitoring of service providers.

2.3 Remittances

Examiners also review activities of remittance transfer providers to ensure that fees are disclosed and charged consistent with subpart B of Regulation E (the Remittance Rule). These examinations found that certain providers have violated regulations by failing to appropriately disclose fees or failing to refund fees, in certain circumstances, because of an error.

The Remittance Rule requires that remittance transfer providers disclose any transfer fees imposed by the provider.[22] Recent examinations have found that remittance providers have failed to disclose fees imposed by their agents at the time of the transfer, in violation of 12 CFR 1005.31(b)(1)(ii). This reduced the total wire amount the recipients received as compared to the amount that had been disclosed. Additionally, in the case of an error for failure to make funds available to a designated recipient by the date of availability, the Remittance Rule states that if a remittance transfer provider determines an error occurred, the provider shall refund to the sender any fees imposed, and to the extent not prohibited by law, taxes collected on the remittance transfer.[23] Examiners found that certain providers failed to correct errors by refunding to the sender fees imposed on the remittance transfer, within the specified time frame, where the recipients did not receive the transfers by the promised date, in violation of 12 CFR 1005.33(c)(2)(ii)(B). In response to these findings, supervised institutions implemented corrective action to prevent future violations and provided remediation to consumers charged fees in violation of regulatory requirements.

3. Consumer Risk-Payment Processing

3.1 Payment Platforms for Student Meal Accounts

Some kindergarten through 12th grade school systems contract with companies that run online platforms that allow parents or guardians to manage their students' meal accounts. In most cases, families using these online platforms pay a per-transaction fee to add funds to their meal accounts. Any school district that participates in Federal school meal programs and contracts with fee-based online platforms must also provide free options for adding money to student meal accounts. As a result, families can avoid the transaction fee by adding funds using one of these alternative methods, such as making payments directly to the school or district.

The CFPB learned of covered persons that maintained these online payment platforms where consumers may have paid fees that they would not have paid if they had known of the existence of free options for adding meal funds to the student's account. Because consumers did not know their options, they incurred transaction fees that they could have avoided. As the fees were assessed on a per-transaction basis, the fees likely disproportionately affected lower-income families that must add smaller amounts more often, thereby incurring more transaction fees than higher-income users that can deposit larger amounts less frequently.

The CFPB notified the covered persons that these practices may not comply with consumer financial protection laws.

4. Supervisory Program Developments

4.1 Recent CFPB Supervision Program Developments

Set forth below is a recap of the most salient supervision program developments that implicate junk fees. More information including circulars, bulletins, and advisory opinions about the CFPB's junk fee initiative can be found at: *https://www.consumerfinance.gov/rules-policy/junk-fees/.*

4.1.1 CFPB Issued a Circular on Unanticipated Overdraft Fee Assessment Practices

On October 26, 2022, the CFPB issued guidance indicating that overdraft fees may constitute an unfair act or practice under the CFPA, even if the entity complies with the Truth in Lending Act (TILA) and Regulation Z, and the Electronic Fund Transfer Act (EFTA) and Regulation E.[24] As detailed in the circular, when supervised institutions charge surprise overdraft fees, sometimes as much as $36, they may be breaking the law. The circular provides some examples of potentially unlawful surprise overdraft fees, including charging fees on purchases made with a positive balance. These overdraft fees occur when an institution displays that a customer has sufficient available funds to complete a debit card purchase at the time of the transaction, but the consumer is later charged an overdraft fee. Often, the institution relies on complex back-office practices to justify charging the fee. For instance, after the institution allows one debit card transaction when there is sufficient money in the account, it nonetheless charges a fee on that transaction later because of intervening transactions.

[21] The CFPB previously discussed similar issues with add-on product refund calculations in *Supervisory Highlights,* Issue 18, Winter 2019, available at: *https://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-winter-2019/.*

[22] 12 CFR 1005.31(b)(1)(ii). As stated in comment 31(b)(1)–1(ii), fees include ''any fees imposed by an agent of the provider at the time of the transfer.''

[23] 12 CFR 1005.33(c)(2)(ii)(B).

[24] Consumer Financial Protection Circular 2022–06, Unanticipated Overdraft Fee Assessment, available at: *https://files.consumerfinance.gov/f/documents/cfpb_unanticipated-overdraft-fee-assessment-practices_circular_2022-10.pdf.*

4.1.2 CFPB Issued a Bulletin on Unfair Returned Deposited Item Fee Assessment Practices

As described above, on October 26, 2022, the CFPB issued a bulletin [25] stating that blanket policies of charging returned deposited item fees to consumers for all returned transactions irrespective of the circumstances or patterns of behavior on the account are likely unfair under the CFPA.

4.1.3 CFPB Issued an Advisory Opinion on Debt Collectors Collection of Pay To Pay Fees

On June 29, 2022, the CFPB issued an advisory opinion [26] affirming that Federal law often prohibits debt collectors from charging ''pay-to-pay'' fees. These charges, commonly described by debt collectors as ''convenience fees,'' are imposed on consumers who want to make a payment in a particular way, such as online or by phone.

5. Remedial Actions

5.1 USASF Servicing

On August 2, 2023, the CFPB filed a lawsuit in Federal court against auto loan servicer USASF Servicing, alleging USASF engaged in a host of illegal practices that harmed individuals with auto loans.[27] These alleged practices include wrongfully disabling borrowers' vehicles, wrongfully activating late payment warning tones, improperly repossessing vehicles, double-billing borrowers for insurance premiums, misallocating consumer payments, and failing to return millions of dollars in unearned GAP premiums to consumers. The CFPB is seeking redress for consumers, civil money penalties, and to stop any future violations.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2023–22869 Filed 10–16–23; 8:45 am]

BILLING CODE 4810–AM–P

[25] Bulletin 2022–06: Unfair Returned Deposited Item Fee Assessment Practices, available at: *https://files.consumerfinance.gov/f/documents/cfpb_returned-deposited-item-fee-assessment-practice_compliance-bulletin_2022-10.pdf.*

[26] Advisory Opinion on Debt Collectors' Collection of Pay-to-Pay Fees, available at: *https://www.consumerfinance.gov/compliance/advisory-opinion-program/.*

[27] *Consumer Financial Protection Bureau* v. *USASF Servicing, LLC.* The complaint is available at: *https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-usasf-servicing-for-illegally-disabling-vehicles-and-for-improper-double-billing-practices/.*

DEPARTMENT OF EDUCATION

Membership of the Performance Review Board

AGENCY: Office of Finance and Operations, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary publishes a list of persons named to serve on the Performance Review Board that oversees the evaluation of performance appraisals for Senior Executive Service members of the Department of Education (Department).

DATES: These appointments are effective on October 17, 2023.

FOR FURTHER INFORMATION CONTACT: Jennifer Geldhof, Director, Executive Resources Division, Office of Human Resources, Office of Finance and Operations, U.S. Department of Education, 400 Maryland Avenue SW, Room 210–00, LBJ, Washington, DC 20202–4573. Telephone: (202) 580–9669. Email: *Jennifer.Geldhof@ed.gov.*

If you use a telecommunications device for the deaf (TDD), or text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Membership

Under the Civil Service Reform Act of 1978, Public Law 95–454 (5 U.S.C. 4314(c)(4)), the Department must publish in the **Federal Register** a list of persons named to serve on the Performance Review Board that oversees the evaluation of performance appraisals for Senior Executive Service members of the Department. The following persons are named to serve on the Performance Review Board:

Chapman, Christopher D.
Clay, Jacqueline J.
Eliadis, Pamela D.
Juengst, Phillip R.
Mitchell, Calvin J.
St. Pierre, Tracey
Toney, Lawanda

Alternate:

Burse, Tiwanda M.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Miguel A. Cardona,

Secretary of Education.

[FR Doc. 2023–22825 Filed 10–16–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2023–IES–0182]

Request for Information on Potential New Program, From Seedlings to Scale (S2S); Correction

AGENCY: Institute of Education Sciences, Department of Education.

ACTION: Notice; correction.

SUMMARY: On October 12, 2023, the Department of Education (Department) published in the **Federal Register** a request for information (RFI) on a potential new program, From Seedlings to Scale (S2S). We are correcting the docket identification number. All other information in the RFI remains the same.

DATES: This correction is applicable October 17, 2023.

FOR FURTHER INFORMATION CONTACT: Erin Higgins, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202. Telephone: (202) 987–1531. Email: *Erin.Higgins@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: On October 12, 2023, the Department published a RFI on S2S, a potential new program. (88 FR 70652). We are correcting the docket identification number.

Accessible Format: On request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in

an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Correction

In FR Doc. No. 2023–22482, appearing on pages 70652–70654 of the **Federal Register** of October 12, 2023, we make the following correction:

On page 70652, in the heading, remove ''[Docket ID ED–2023–IES–0011]'' and add, in its place, ''[Docket ID ED–2023–IES–0182]''.

Mark Schneider,

Director, Institute of Education Sciences.

[FR Doc. 2023–22898 Filed 10–16–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Public Availability of the Department of Energy's FY 2021 Service Contract Inventory

AGENCY: Office of Acquisition Management, Department of Energy.

ACTION: Notice of public availability of FY 2021 service contract inventory.

SUMMARY: In accordance with Division C of the Consolidated Appropriations Act of 2010 and Office of Management and Budget (OMB) guidance, the Department of Energy (DOE) is publishing this notice to advise the public on the availability of the FY 2021 Government-Wide Service Contract Inventory, FY2021 DOE Service Contract Inventory Analysis Plan and FY 2020 DOE Service Contract Inventory Analysis. This inventory provides information on service contract actions over $150,000 that DOE completed in FY 2021. The inventory has been developed in accordance with guidance issued by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). The FY 2021 government-wide service contract inventory can be found at *www.acquisition.gov/service-contract-inventory.* The Department of Energy's service contract inventory data is included in the government-wide inventory posted on the above link and the government-wide inventory can be filtered to display the inventory data for the Department. DOE has posted its FY 2020 Service Contract Inventory Analysis and FY 2021 Service Contract Inventory Analysis Plan at: *https://energy.gov/management/downloads/service-contract-inventory.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Lance Nyman in the Strategic Programs Division at (240) 474–7960 or *Lance.Nyman@hq.doe.gov.*

Signing Authority

This document of the Department of Energy was signed on October 10, 2023, by Berta Schreiber, Director, Office of Acquisition Management, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on October 12, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–22863 Filed 10–16–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket Nos.	File date	Presenter or requester
Prohibited:		
1. P–2082–000	10–2–2023	FERC Staff [1].
2. CP16–10–012, CP21–57–000, CP19–477–000	10–3–2023	FERC Staff [2].
Exempt:		
1. CP17–66–001, CP17–67–001	9–28–2023	U.S. Senator Bill Cassidy.
2. EC23–74–000	10–5–2023	Ohio State Senator Rob McColley.
3. P–77–001	10–6–2023	U.S. Congressman Mike Thompson.
4. CP22–2–000	10–11–2023	U.S. Congress [3].

[1] Emailed comments dated 9/29/23 from William E. Simpson II.
[2] Emailed comments dated 10/1/23 from William F. Limpert.
[3] Congress Members Lori Chavez-DeRemer, Cliff Bentz, Mike Simpson, Russ Fulcher, Kelly Armstrong, Doug LaMaifa, Senators Mike Crapo and James E. Risch.

Dated: October 11, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–22864 Filed 10–16–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9079–006]

R.J. Fortier Hydropower, Inc., Northeast Community Services, Inc.; Notice of Transfer of Exemption

1. On September 18, 2023, Northeast Community Services, Inc. filed a notification of the transfer for the 65-kilowatt Upper Spears Stream Hydroelectric Project No. 9079 from R.J. Fortier Hydropower, Inc. to Northeast Community Services, Inc. The exemption from licensing was originally issued on September 30, 1985.[1] The project is located on the Upper Spears Stream, Oxford County, Maine. The transfer of an exemption does not require Commission approval.

2. Northeast Community Services, Inc. is now the exemptee of the Upper Spears Stream Hydroelectric Project No. 9079. All correspondence must be forwarded to Tyler A. Hicks, President, Northeast Community Services, Inc., Massachusetts Address: 257 Union Street, New Bedford, MA 02740, Maine address: 10 Murray Street, Bingham, ME 04920, Phone: (508) 851–9158, email: *northeastcommunityservices@gmail.com.*

Dated: October 11, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–22888 Filed 10–16–23; 8:45 am]

BILLING CODE 6717–01–P

[1] *Mark A. Vaughn,* 32 FERC ¶ 62,716 (1985). Subsequently, on March 31, 2004, the project was transferred to R.J. Fortier Hydropower Inc.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–536–000]

Eastern Shore Natural Gas Company; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Worcester Resiliency Upgrade Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document, that will discuss the environmental impacts of the Worcester Resiliency Upgrade Project involving construction and operation of facilities by Eastern Shore Natural Gas Company (Eastern Shore) in Worcester, Wicomico, and Somerset Counties, Maryland and Sussex County, Delaware. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on November 10, 2023. Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on September 15, 2023, you will need to file those comments in Docket No. CP23–536–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in

court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

Eastern Shore provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas, Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP23–536–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

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.*

Summary of the Proposed Project

Eastern Shore proposes to install five liquified natural gas (LNG) storage tanks and LNG vaporizers in Worcester County, Maryland, approximately 1.1 miles of 10-inch-diameter pipeline looping in Sussex County, Delaware and Wicomico County, Maryland, upgrades to an existing pressure control station in Sussex County, Delaware, and upgrades to three existing meter and regulating stations in Sussex County, Delaware and Worcester and Somerset Counties, Maryland. The Worcester Resiliency Upgrade Project would store approximately 475,000 gallons of LNG, equivalent to 39,627 Dekatherms, and provide 14,000 Dekatherms per day of corresponding peak firm natural gas transportation service. According to Eastern Shore, its project would enhance the resiliency of Eastern Shore's system.

The general location of the project facilities is shown in appendix 1.[1]

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary''. For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

Land Requirements for Construction

Construction of the proposed facilities would disturb about 36.9 acres of land for the aboveground facilities and the pipeline. Following construction, Eastern shore would maintain about 16.1 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed project under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- socioeconomics;
- environmental justice;
- air quality and noise; and
- reliability and safety.

Community groups, schools, churches, and businesses within these environmental justice communities, along with known environmental justice organizations, have been included on the Commission's environmental mailing list for the project, as further explained in the *Environmental Mailing List* section of this notice.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/Notice of Schedule* will be issued,

which will open up an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary [2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP23–536–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: October 11, 2023.

Kimberly D. Bose,

Secretary.

Appendix 1

BILLING CODE 6717–01–P

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at title 40, Code of Federal Regulations, section 1501.8.

[4] The Advisory Council on Historic Preservation's regulations are at title 36, Code of Federal Regulations, part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

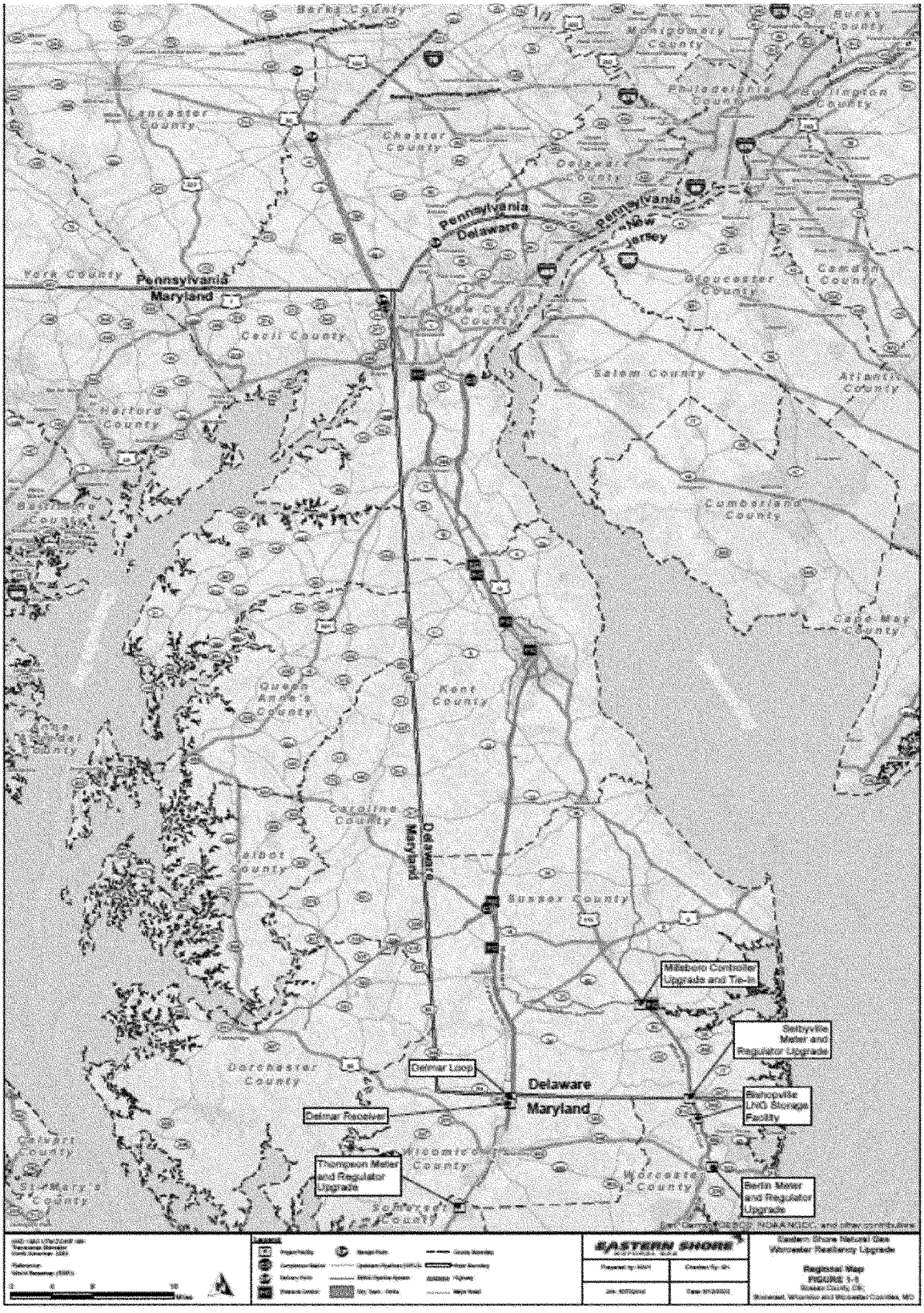

Figure 1
Overview Map with Project Areas Labeled

MAILING LIST UPDATE FORM

Worcester Resiliency Upgrade Project

Name_____

Agency_____

Address_____

City_____**State**_____ **Zip Code**_____

☐ **Please update the mailing list**

☐ **Please remove my name from the mailing list**

FROM_____

_____

_____

_____

ATTN: OEP - Gas 2, PJ - 11.2
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

CP23-536-000 Worcester Resiliency Upgrade Project

Staple or Tape Here

[FR Doc. 2023–22886 Filed 10–16–23; 8:45 am]
BILLING CODE 6717–01–C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meetings

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND DATE: October 19, 2023, 10 a.m.

PLACE: Room 2C, 888 First Street NE, Washington, DC 20426.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: Agenda.
* *Note*—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed online at the Commission's website at *https://elibrary.ferc.gov/eLibrary/search* using the eLibrary link.

1105TH—MEETING

[Open Meeting; October 19, 2023, 10:00 a.m.]

Item No.	Docket No.	Company
	Administrative	
A–1	AD24–1–000	Agency Administrative Matters.
A–2	AD24–2–000	Customer Matters, Reliability, Security and Market Operations.
	Electric	
E–1	RM22–12–000	Reliability Standards to Address Inverter-Based Resources.
E–2	RM23–9–000	Revisions to the Filing Process and Data Collection for the Electric Quarterly Report.
E–3	ER23–739–000; ER23–739–001; ER23–743–000; ER23–743–001.	ISO New England Inc.
E–4	ER23–2463–000	Idaho Power Company.
E–5	ER22–2318–001; ER22–2318–002	MATL LLP.
E–6	ER22–2883–001	Western Interconnect LLC.
E–7	ER22–2989–000	Wilderness Line Holdings, LLC.
E–8	EC23–111–000	Idaho Power Company; PacifiCorp.
E–9	EC23–99–000	Northern Indiana Public Service Company LLC, Dunns Bridge Solar Center, LLC, Indiana Crossroads Wind Farm LLC, Meadow Lake Solar Park LLC, and Rosewater Wind Farm LLC.
E–10	RR23–3–000	North American Electric Reliability Corporation.
E–11	ER23–2603–000	Twelvemile Solar Energy, LLC.
E–12	ER14–225–009; EL23–95–000	New Brunswick Energy Marketing Corporation.
E–13	PL24–1–000	Project-Area Wage Standards in the Labor Cost Component of Cost-of-Service Rates.
E–14	TX23–5–000	THSI bn, LLC.
	Miscellaneous	
M–1	RM23–11–000	Requests for Commission Records Available in the Public Reference Room.
	Gas	
G–1	OR18–7–002;	Epsilon Trading, LLC, Chevron Products Company, and Valero Marketing and Supply Company v. Colonial Pipeline Company.
	OR18–12–002	BP Products North America, Inc., Trafigura Trading LLC, and TCPU, Inc. v. Colonial Pipeline Company.
	OR18–17–002	TransMontaigne Product Services LLC v. Colonial Pipeline Company.
	OR19–1–001	Southwest Airlines Co. and United Aviation Fuels Corporation v. Colonial Pipeline Company.
	OR19–4–001	Phillips 66 Company v. Colonial Pipeline Company.
	OR19–16–001	American Airlines, Inc. v. Colonial Pipeline Company.
	OR19–20–000	Metroplex Energy, Inc. v. Colonial Pipeline Company.
	OR19–27–000	Gunvor USA LLC v. Colonial Pipeline Company.
	OR19–36–000	Pilot Travel Centers, LLC v. Colonial Pipeline Company.
	OR20–7–000	Sheetz, Inc. v. Colonial Pipeline Company.
	OR20–9–000; (consolidated)	Apex Oil Company, Inc. and FutureFuel Chemical Company v. Colonial Pipeline Company.
G–2	OR18–7–003	Epsilon Trading, LLC, Chevron Products Company, and Valero Marketing and Supply Company v. Colonial Pipeline Company.
	OR18–12–003	BP Products North America, Inc., Trafigura Trading LLC, and TCPU, Inc. v. Colonial Pipeline Company.
	OR18–17–003	TransMontaigne Product Services LLC v. Colonial Pipeline Company.
	OR19–1–002	Southwest Airlines Co. and United Aviation Fuels Corporation v. Colonial Pipeline Company.
	OR19–4–002	Phillips 66 Company v. Colonial Pipeline Company.
	OR19–16–002	American Airlines, Inc. v. Colonial Pipeline Company.
	OR19–20–001	Metroplex Energy, Inc. v. Colonial Pipeline Company.
	OR19–27–001	Gunvor USA LLC v. Colonial Pipeline Company.

1105TH—MEETING—Continued

[Open Meeting; October 19, 2023, 10:00 a.m.]

Item No.	Docket No.	Company
	OR19–36–001	Pilot Travel Centers, LLC v. Colonial Pipeline Company.
	OR20–7–001	Sheetz, Inc. v. Colonial Pipeline Company.
	OR20–9–001; (consolidated)	Apex Oil Company, Inc. and FutureFuel Chemical Company v. Colonial Pipeline Company.
	Hydro	
H–1	P–15300–000	BOST1 Hydroelectric, LLC.
H–2	P–2318–055	Erie Boulevard Hydropower, L.P.
	P–12252–038	Hudson River-Black River Regulating District.
	Certificates	
C–1	CP22–2–000	Gas Transmission Northwest, LLC.
C–2	CP22–466–000	WBI Energy Transmission, Inc.
C–3	CP17–66–001	Venture Global Plaquemines LNG, LLC.
	CP17–67–001	Venture Global Gator Express, LLC.
C–4	CP22–486–000	Texas Eastern Transmission, LP.
C–5	CP22–468–000	Trailblazer Pipeline Company LLC and Rockies Express Pipeline LLC.
C–6	CP21–455–000	Equitrans, L.P.
C–7	RM22–8–000	Updating Regulations for Engineering and Design Materials for Liquefied Natural Gas Facilities Related to Potential Impacts Caused by Natural Hazards.

A free webcast of this event is available through the Commission's website. Anyone with internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The Federal Energy Regulatory Commission provides technical support for the free webcasts. Please call (202) 502–8680 or email *customer@ferc.gov* if you have any questions.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters but will not be telecast.

Issued: October 12, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–22983 Filed 10–13–23; 4:15 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–2003–002.

Applicants: Invenergy Nelson Expansion LLC.

Description: Tariff Amendment: Supplement to Deficiency Letter Response to be effective 7/1/2023.

Filed Date: 10/11/23.

Accession Number: 20231011–5159.

Comment Date: 5 p.m. ET 11/1/23.

Docket Numbers: ER24–69–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 2969R4 Associated Electric Cooperative, Inc. NITSA NOA to be effective 10/1/2023.

Filed Date: 10/11/23.

Accession Number: 20231011–5034.

Comment Date: 5 p.m. ET 11/1/23.

Docket Numbers: ER24–70–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, SA No. 7087; Queue No. AF1–062 to be effective 9/11/2023.

Filed Date: 10/11/23.

Accession Number: 20231011–5035.

Comment Date: 5 p.m. ET 11/1/23.

Docket Numbers: ER24–71–000.

Applicants: Aron Energy Prepay 30 LLC.

Description: Baseline eTariff Filing: Baseline new to be effective 12/11/2023.

Filed Date: 10/11/23.

Accession Number: 20231011–5048.

Comment Date: 5 p.m. ET 11/1/23.

Docket Numbers: ER24–72–000.

Applicants: Aron Energy Prepay 29 LLC.

Description: Baseline eTariff Filing: Baseline new to be effective 12/11/2023.

Filed Date: 10/11/23.

Accession Number: 20231011–5049.

Comment Date: 5 p.m. ET 11/1/23.

Docket Numbers: ER24–73–000.

Applicants: CenterPoint Energy Houston Electric, LLC.

Description: § 205(d) Rate Filing: TFO Tariff Interim Rate Revision to Conform with PUCT to be effective 10/6/2023.

Filed Date: 10/11/23.

Accession Number: 20231011–5056.

Comment Date: 5 p.m. ET 11/1/23.

Docket Numbers: ER24–74–000.

Applicants: Metropolitan Edison Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Metropolitan Edison Company submits tariff filing per 35.13(a)(2)(iii): Met-Ed Amends 10 ECSAs (5439 5509 5510 5518 5519 5581 5584 5585 5642 5648) to be effective 12/31/9998.

Filed Date: 10/11/23.

Accession Number: 20231011–5082.

Comment Date: 5 p.m. ET 11/1/23.

Docket Numbers: ER24–75–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 7100; Queue No. AE1–208/AE2–169 to be effective 9/11/2023.

Filed Date: 10/11/23.

Accession Number: 20231011–5113.

Comment Date: 5 p.m. ET 11/1/23.

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: October 11, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–22865 Filed 10–16–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP17–117–001; CP17–118–001]

Driftwood LNG LLC, Driftwood Pipeline LLC; Notice of Request for Extension of Time

Take notice that on October 4, 2023, Driftwood LNG LLC (Driftwood LNG) and Driftwood Pipeline LLC (Driftwood Pipeline) (collectively, Driftwood) requested that the Federal Energy Regulatory Commission (Commission) grant an extension of time (2023 Extension of Time Request) of an additional 36 months to construct and operate facilities for liquefaction and export of natural gas in Calcasieu Parish, Louisiana (LNG Terminal and Pipeline Project, respectively) authorized by the Commission in Docket Nos. CP17–117–000 and CP17–118–000.[1] On April 18, 2019, the Commission issued an Order Granting Authorization Under Sections 3 and 7 of the Natural Gas Act, which stipulated Driftwood fully construct and make available facilities for service within seven years of the date of the Order.

In its 2023 Extension of Time Request, Driftwood states, despite significant progress with construction of the Project, it has encountered unforeseen circumstances in recent years that are preventing it from meeting the Commission's in-service deadline for the liquefied natural gas (LNG) Terminal and associated Pipeline Project. Driftwood cites the global upheaval stemming from the COVID–19 pandemic caused cascading market and logistical impacts on workforce, safety, supply chain, and investment in infrastructure projects; [2] these circumstances caused unforeseeable difficulties for LNG project development and made securing long-term LNG commercial commitments difficult over the last several years. Driftwood requests that the Commission grant a 36-month extension of time so that it has the required time to: (i) receive its long lead manufactured equipment, which cannot be manufactured and delivered to the site in time to meet the current deadline; (ii) install the equipment and construct the remaining facilities; and (iii) continue to attract and secure customers and financing.

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on Driftwood's request for an extension of time may do so. No reply comments or answers will be considered. If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (NGA) (18 CFR 157.10).

As a matter of practice, the Commission itself generally acts on requests for extensions of time to complete construction for NGA facilities when such requests are contested before order issuance. For those extension requests that are contested,[3] the Commission will aim to issue an order acting on the request within 45 days.[4] The Commission will address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension.[5] The Commission will not consider arguments that re-litigate the issuance of the certificate order, including whether the Commission properly found the project to be in the public convenience and necessity and whether the Commission's environmental analysis for the certificate complied with the National Environmental Policy Act.[6] At the time a pipeline requests an extension of time, orders on certificates of public convenience and necessity are final and the Commission will not re-litigate their issuance.[7] The OEP Director, or his or her designee, will act on all of those extension requests that are uncontested.

In addition to publishing the full text of this document in the **Federal Register**, The Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and three copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

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

[1] Driftwood LNG LLC & Driftwood Pipeline LLC, 167 FERC ¶ 61,054 (2019) (Order).

[2] Driftwood points to a legal challenge to its U.S. Army Corps of Engineers permit that created difficulties with respect to Driftwood's ability to secure final commercial and financial commitments for the Project. However, the U.S. Court of Appeals for the Fifth Circuit recently issued a decision denying the petition for review filed by Healthy Gulf and the Sierra Club. *Healthy Gulf* v. *U.S. Army Corps of Eng'rs,* 2023 WL 5742541 (5th Cir. Sept. 6, 2023).

[3] Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1) (2022).

[4] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

[5] *Id.* at P 40.

[6] Similarly, the Commission will not re-litigate the issuance of an NGA section 3 authorization, including whether a proposed project is not inconsistent with the public interest and whether the Commission's environmental analysis for the permit order complied with NEPA.

[7] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

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 26, 2023.

Dated: October 11, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–22887 Filed 10–16–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–61–000]

Sky Ranch Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Sky Ranch Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 31, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: October 11, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–22866 Filed 10–16–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2023–0323; FRL–11455–01–OCSPP]

Petition To Revoke Remaining Tolerances for Dicofol Use; Notice of Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is seeking public comment on a January 8, 2023, petition requesting that the Agency revoke all remaining tolerances of the pesticide dicofol. The petitioner submitted this petition pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: Comments must be received on or before November 16, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2023–0323, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Bartow, Pesticide Re-evaluation Division (7508M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–2280; email address: *bartow.susan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders, including environmental, human health, and agricultural advocates, the chemical industry, pesticide users, agricultural producers, food manufacturers, pesticide manufacturers, and members of the public interested in the sale, distribution, or use of pesticides. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the

disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/comments.html.*

II. What action is the Agency taking?

EPA requests public comment during the next 30 days on a pesticide petition (available in docket number EPA–HQ–OPP–2023–0323 at *https://www.regulations.gov*). The petitioner requests that EPA revoke all remaining tolerances of the pesticide dicofol currently listed under 40 CFR 180.163. The petition is filed pursuant to section 408 of the FFDCA.

The petitioner indicates that while he is aware that multiple pesticides are allowed for use on tea, he wishes to ensure that the tea he consumes is free of dicofol residues. The petitioner provides a timeline of the registration and use of dicofol as a pesticide in the United States. The timeline describes an Agency decision on May 9, 2012 (77 FR 27164) in which all dicofol tolerances were revoked except for tolerances on ''tea, dried' and 'tea, plucked leaves.'' The 2012 decision indicated that the Agency would address the tea tolerances and public comments received on them in a future document to be published in the **Federal Register**. The Tea Association of the U.S.A., Inc. previously provided public comments that dicofol is used in tea production in countries such as India, China, and Argentina, and requested that EPA not revoke the dicofol tolerances on tea but maintain them for importation purposes. The petitioner comments that the Agency did not address the remaining tea tolerances and public comments, as previously indicated in the 2012 decision.

Dicofol is an organochlorine miticide that was registered in the United States to control mites on a variety of noncrop areas and on food crops from 1957 to October 31, 2013. All use of dicofol in the United States has been cancelled, and all dicofol tolerances expired on October 31, 2016, except for tolerances on ''tea, dried' and 'tea, plucked leaves.''

Background materials related to the Agency's registration of dicofol and the phase out of its use are available online in public docket EPA–HQ–OPP–2005–0220 at *https://www.regulations.gov.* Information related to the Agency's dicofol tolerance actions are available online in public docket EPA–HQ–OPP–2012–0171 at *https://www.regulations.gov.*

Dated: October 11, 2023.

Mary Elissa Reaves,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2023–22906 Filed 10–16–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11457–01–R3]

Clean Air Act Operating Permit Program; Order on Petitions for Objection to State Operating Permit for United States Steel Corporation, Mon Valley Works Clairton Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition.

SUMMARY: The Environmental Protection Agency (EPA) Administrator signed an order dated September 18, 2023, on two petitions, each dated March 6, 2023, granting in part and denying in part a petition from the Environmental Integrity Project (EIP), the Clean Air Council (CAC), and Pennsylvania's Future (PennFuture) (the EIP Petition), and granting in full a separate petition from the Group Against Smog and Pollution (GASP) (the GASP Petition). The petitions requested that the EPA object to a Clean Air Act (CAA) title V operating permit issued by the Allegheny County Health Department (ACHD) to the U.S. Steel Mon Valley Works Clairton Plant (U.S. Steel, Clairton) for its by-products coke plant located in Clairton, Allegheny County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: David Talley, EPA Region III, (215) 814–2117, *talley.david@epa.gov.* The final order and petition are available electronically at: *www.epa.gov/title-v-operating-permits/title-v-petition-database.*

SUPPLEMENTARY INFORMATION: EPA received the EIP Petition and the GASP Petition, each dated March 6, 2023, requesting that the EPA object to the issuance of operating permit no. 0052–OP22, issued by ACHD to U.S. Steel, Clairton in Allegheny County, Pennsylvania. On September 18, 2023, the EPA Administrator issued an order granting in part and denying in part the EIP petition and granting in full the GASP petition. The order itself explains the basis for the EPA's decision.

Sections 307(b) and 505(b)(2) of the CAA provide that a petitioner may request judicial review of those portions of an order that deny issues in a petition. Any petition for review shall be filed in the United States Court of Appeals for the appropriate circuit no later than December 18, 2023.

Cristina Fernández,

Director, Air and Radiation Division, Region III.

[FR Doc. 2023–22877 Filed 10–16–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Issuance of Technical Release 22, Leases Implementation Guidance Updates

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Federal Accounting Standards Advisory Board has issued Federal Financial Accounting Technical Release 22 titled ''Leases Implementation Guidance Updates: Amendments to Technical Release 20.''

ADDRESSES: Technical Release 22 is available on the FASAB website at *http://www.fasab.gov/accounting-standards/.* Copies can be obtained by contacting FASAB at (202) 512–7350.

FOR FURTHER INFORMATION CONTACT: Ms. Monica R. Valentine, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548, or call (202) 512–7350.

Authority: 31 U.S.C. 3511(d); Federal Advisory Committee Act, 5 U.S.C. 1001–1014.

Dated: October 12, 2023.

Monica R. Valentine,

Executive Director.

[FR Doc. 2023–22860 Filed 10–16–23; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS23–16]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of special closed meeting.

SUMMARY: In accordance with section 1104(b) of title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) met for a Special Closed Meeting on these dates.

Location: Virtual meeting via Webex.

Date: August 31, 2023 and September 7, 2023.

Time: 11:00 a.m. ET.

Location: Virtual meeting via Webex.

Date: September 22, 2023.

Time: 2:01 p.m. ET.

Action and Discussion Item

Personnel Matter

The ASC convened a Special Closed Meeting to discuss a personnel matter. No action was taken by the ASC.

James R. Park,

Executive Director.

[FR Doc. 2023–22890 Filed 10–16–23; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than November 16, 2023.

A. Federal Reserve Bank of Boston (Prabal Chakrabarti, Senior Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02210–2204. Comments can also be sent electronically to *BOS.SRC.Applications.Comments@bos.frb.org:*

1. *Eastern Bankshares, Inc., Boston, Massachusetts*; to acquire Cambridge Bancorp, and thereby indirectly acquire Cambridge Trust Company, both of Cambridge, Massachusetts.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–22889 Filed 10–16–23; 8:45 am]

BILLING CODE P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Notice of Board Meeting

DATES: October 24, 2023 at 9 a.m. PDT/12 p.m. EDT.

ADDRESSES: Telephonic. Dial-in (listen only) information: Number: 1–202–599–1426, Code: 716 481 115#; or via web: *https://teams.microsoft.com/l/meetup-join/19%3ameeting_M2VhNGNhZjYtODRjYy00NmY3LWI1NDktY2Q3YjI0YTFkYWE w%40thread.v2/0?context=%7b%22Tid%22%3a%223f6323b7-e3fd-4f35-b43d-1a7afae5910d%22%2c%22Oid%22%3a%2241d6f4d1-9772-4b51-a10d-cf72f842224a%22%7d.*

FOR FURTHER INFORMATION CONTACT: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

SUPPLEMENTARY INFORMATION:

Board Meeting Agenda

Open Session

1. Approval of the September 26, 2023, Board Meeting Minutes
2. Monthly Reports
   (a) Participant Report
   (b) Legislative Report
3. Quarterly Reports
   (c) Investment Review
   (d) Audit Status
   (e) Budget Review

Closed Session

4. Information covered under 5 U.S.C. 552b(c)(6) and (c)(10).

Authority: 5 U.S.C. 552b(e)(1).

Dated: October 11, 2023.

Dharmesh Vashee,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2023–22803 Filed 10–16–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8083–N]

RIN 0938–AV11

Medicare Program; CY 2024 Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year (CY) 2024 under Medicare's Hospital Insurance (Part A) program. The Medicare statute specifies the formulas used to determine these amounts. For CY 2024, the inpatient hospital deductible will be $1,632. The daily coinsurance amounts for CY 2024 will be as follows: $408 for the 61st through 90th day of hospitalization in a benefit period; $816 for lifetime reserve days; and $204 for the 21st through 100th day of extended care services in a skilled nursing facility in a benefit period.

DATES: The deductible and coinsurance amounts announced in this notice are effective on January 1, 2024.

FOR FURTHER INFORMATION CONTACT: Suzanne Codespote, (410) 786–7737.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1813 of the Social Security Act (the Act) provides for an inpatient hospital deductible to be subtracted from the amount payable by Medicare for inpatient hospital services furnished to a beneficiary. It also provides for certain coinsurance amounts to be subtracted from the amounts payable by Medicare for inpatient hospital and extended care services. Section 1813(b)(2) of the Act requires the Secretary of the Department of Health and Human Services (the Secretary) to determine and publish each year the amount of the inpatient hospital deductible and the hospital and

extended care services coinsurance amounts applicable for services furnished in the following calendar year (CY).

II. Computing the Inpatient Hospital Deductible for CY 2024

Section 1813(b) of the Act prescribes the method for computing the amount of the inpatient hospital deductible. The inpatient hospital deductible is an amount equal to the inpatient hospital deductible for the preceding CY, adjusted by our best estimate of the payment-weighted average of the applicable percentage increases (as defined in section 1886(b)(3)(B) of the Act) used for updating the payment rates to hospitals for discharges in the fiscal year (FY) that begins on October 1 of the same preceding CY, and adjusted to reflect changes in real case-mix. The adjustment to reflect real case-mix is determined on the basis of the most recent case-mix data available. The amount determined under this formula is rounded to the nearest multiple of $4 (or, if midway between two multiples of $4, to the next higher multiple of $4).

Under section 1886(b)(3)(B)(i)(XX) of the Act, the percentage increase used to update the payment rates for FY 2024 for hospitals paid under the inpatient prospective payment system (IPPS) is the inpatient hospital operating market basket percentage increase, otherwise known as the IPPS market basket update, reduced by an adjustment based on changes in economy-wide productivity (the productivity adjustment) (see section 1886(b)(3)(B)(xi)(II) of the Act). Under section 1886(b)(3)(B)(viii) of the Act, for FY 2024, the applicable percentage increase for hospitals that do not submit quality data as specified by the Secretary is reduced by one quarter of the market basket update. We are estimating that after accounting for those hospitals receiving the lower market basket update in the payment-weighted average update, the calculated deductible will not be affected, since most hospitals submit quality data and receive the full market basket update. Section 1886(b)(3)(B)(ix) of the Act requires that any hospital that is not a meaningful electronic health record (EHR) user (as defined in section 1886(n)(3) of the Act) will have three-quarters of the market basket update reduced by 100 percent for FY 2017 and each subsequent FY. We are estimating that after accounting for these hospitals receiving the lower market basket update, the calculated deductible will not be affected, since most hospitals are meaningful EHR users and are expected to receive the full market basket update.

Under section 1886 of the Act, the percentage increase used to update the payment rates (or target amounts, as applicable) for FY 2024 for hospitals excluded from the inpatient prospective payment system is as follows:

- The percentage increase for long-term care hospitals is the LTCH market basket percentage increase reduced by the productivity adjustment (see section 1886(m)(3)(A) of the Act). In addition, these hospitals may also be impacted by the quality reporting adjustments and the site-neutral payment rates (see sections 1886(m)(5) and 1886(m)(6) of the Act).
- The percentage increase for inpatient rehabilitation facilities is the IRF market basket percentage increase reduced by the productivity adjustment in accordance with section 1886(j)(3)(C)(ii)(I) of the Act. In addition, these hospitals may also be impacted by the quality reporting adjustments (see section 1886(j)(7) of the Act).
- The percentage increase for inpatient psychiatric facilities is the IPF market basket percentage increase reduced by the productivity adjustment (see section 1886(s)(2)(A)(i) of the Act). In addition, these hospitals may also be impacted by the quality reporting adjustments (see section 1886(s)(4) of the Act).
- The percentage increase used to update the target amounts for other types of hospitals that are excluded from the inpatient prospective payment system and that are paid on a reasonable cost basis, subject to a rate-of-increase ceiling, is the IPPS operating market basket percentage increase, which is described at section 1886(b)(3)(B)(ii)(VIII) of the Act and 42 CFR 413.40(c)(3). These other types of hospitals include cancer hospitals, children's hospitals, extended neoplastic disease care hospitals, religious nonmedical health care institutions, and hospitals located outside the 50 states, the District of Columbia, and Puerto Rico.

The IPPS operating market basket percentage increase for FY 2024 is 3.3 percent and the productivity adjustment is 0.2 percentage point, as announced in the final rule that appeared in the **Federal Register** on August 28, 2023, entitled ''Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2024 Rates; Quality Programs and Medicare Promoting Interoperability Program Requirements for Eligible Hospitals and Critical Access Hospitals; Rural Emergency Hospital and Physician-Owned Hospital Requirements; and Provider and Supplier Disclosure of Ownership; and Medicare Disproportionate Share Hospital (DSH) Payments: Counting Certain Days Associated With Section 1115 Demonstrations in the Medicaid Fraction'' (88 FR 59035). Therefore, the percentage increase for hospitals paid under the inpatient prospective payment system that submit quality data and are meaningful EHR users is 3.1 percent (that is, the FY 2024 market basket update of 3.3 percent less the productivity adjustment of 0.2 percentage point). The average payment percentage increase for hospitals excluded from the inpatient prospective payment system is 3.35 percent. This average includes long-term care hospitals, inpatient rehabilitation facilities, inpatient psychiatric facilities, and other hospitals excluded from the inpatient prospective payment system. Weighting these percentages in accordance with payment volume, our best estimate of the payment-weighted average of the increases in the payment rates for FY 2024 is 3.13 percent.

To develop the adjustment to reflect changes in real case-mix, we first calculated an average case-mix for each hospital that reflects the relative costliness of that hospital's mix of cases compared with those of other hospitals. We then computed the change in average case-mix for hospitals paid under the Medicare inpatient prospective payment system in FY 2023 compared with FY 2022. (We excluded from this calculation hospitals whose payments are not based on the inpatient prospective payment system because their payments are based on alternate prospective payment systems or reasonable costs.) We used Medicare bills from prospective payment hospitals that we received as of July 2023. These bills represent a total of about 6.0 million Medicare discharges for FY 2023 and provide the most recent case-mix data available at this time. Based on these bills, the change in average case-mix in FY 2023 is −1.0 percent. Based on these bills and past experience, we expect the overall FY 2023 case mix change to be −1.0 percent as the year progresses and more FY 2023 data become available.

Section 1813 of the Act requires that the inpatient hospital deductible be adjusted only by that portion of the case mix change that is determined to be real. Real case-mix is that portion of case-mix that is due to changes in the mix of cases in the hospital and not due to coding optimization. COVID–19 has complicated the determination of real case-mix changes. COVID–19 cases

typically have higher-weighted MS DRGs, which would cause a real increase in case-mix, while hospitals have experienced a reduction in the number of lower-weighted cases, which would also cause a real increase in case-mix. The lower number of COVID–19 cases in 2023 compared with the last several years would therefore mean a decrease in real case mix. Because of the uncertainty, we are assuming that all of the recently observed care is not due to coding optimization and that all of the −1.0 percent is real.

Thus, the estimate of the payment-weighted average of the applicable percentage increases used for updating the payment rates is 3.13 percent, and the real case-mix adjustment factor for the deductible is −1.0 percent. Accordingly, using the statutory formula as stated in section 1813(b) of the Act, we calculate the inpatient hospital deductible for services furnished in CY 2024 to be $1,632. This deductible amount is determined by multiplying $1,600 (the inpatient hospital deductible for CY 2023 (86 FR 64217)) by the payment-weighted average increase in the payment rates of 1.0313 multiplied by the decrease in real case-mix of 0.99, which equals $1,633.58 and is rounded to $1,632. (based on rounding to the nearest multiple of 4).

III. Computing the Inpatient Hospital and Extended Care Services Coinsurance Amounts for CY 2024

The coinsurance amounts provided for in section 1813 of the Act are defined as fixed percentages of the inpatient hospital deductible for services furnished in the same CY. The increase in the deductible generates increases in the coinsurance amounts. For inpatient hospital and extended care services furnished in CY 2024, in accordance with the fixed percentages defined in the law, the daily coinsurance for the 61st through 90th day of hospitalization in a benefit period will be $408 (one-fourth of the inpatient hospital deductible as stated in section 1813(a)(1)(A) of the Act); the daily coinsurance for lifetime reserve days will be $816 (one-half of the inpatient hospital deductible as stated in section 1813(a)(1)(B) of the Act); and the daily coinsurance for the 21st through 100th day of extended care services in a skilled nursing facility (SNF) in a benefit period will be $204 (one-eighth of the inpatient hospital deductible as stated in section 1813(a)(3) of the Act).

IV. Cost to Medicare Beneficiaries

Table 1 summarizes the deductible and coinsurance amounts for CYs 2023 and 2024, as well as the number of each that is estimated to be paid.

TABLE 1—MEDICARE PART A DEDUCTIBLE AND COINSURANCE AMOUNTS FOR CYS 2023 AND 2024

Type of cost sharing	Value		Number paid (in millions)	
	2023	2024	2023	2024
Inpatient hospital deductible	$1,600	$1,632	5.15	5.05
Daily coinsurance for 61st–90th day	400	408	1.29	1.26
Daily coinsurance for lifetime reserve days	800	816	0.64	0.63
SNF coinsurance	200	204	26.99	25.28

The estimated total decrease in costs to beneficiaries is about $240 million (rounded to the nearest $10 million) because of (1) the increase in the deductible and coinsurance amounts and (2) the decrease in the number of deductibles and daily coinsurance amounts paid. We determine the decrease in cost to beneficiaries by calculating the difference between the CY 2023 and CY 2024 deductible and coinsurance amounts multiplied by the estimated decrease in the number of deductible and coinsurance amounts paid.

V. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment prior to a rule taking effect in accordance with section 1871 of the Act and section 553(b) of the Administrative Procedure Act (APA). Section 1871(a)(2) of the Act provides that no rule, requirement, or other statement of policy (other than a national coverage determination) that establishes or changes a substantive legal standard governing the scope of benefits, the payment for services, or the eligibility of individuals, entities, or organizations to furnish or receive services or benefits under Medicare shall take effect unless it is promulgated through notice and comment rulemaking. Unless there is a statutory exception, section 1871(b)(1) of the Act generally requires the Secretary to provide for notice of a proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment before establishing or changing a substantive legal standard regarding the matters enumerated by the statute. Similarly, under 5 U.S.C. 553(b) of the APA, the agency is required to publish a notice of proposed rulemaking in the **Federal Register** before a substantive rule takes effect. Section 553(d) of the APA and section 1871(e)(1)(B)(i) of the Act usually require a 30-day delay in effective date after issuance or publication of a rule, subject to exceptions. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the advance notice and comment requirement and the delay in effective date requirements. Sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act also provide exceptions from the notice and 60-day comment period and the 30-day delay in effective date. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act expressly authorize an agency to dispense with notice and comment rulemaking for good cause if the agency makes a finding that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest.

The annual inpatient hospital deductible and the hospital and extended care services coinsurance amounts announcement set forth in this notice does not establish or change a substantive legal standard regarding the matters enumerated by the statute or constitute a substantive rule, which would be subject to the notice requirements in section 553(b) of the APA. However, to the extent that an opportunity for public notice and comment could be construed as required for this notice, we find good cause to waive this requirement.

Section 1813(b)(2) of the Act requires publication of the inpatient hospital deductible and the hospital and extended care services coinsurance amounts between September 1 and September 15 of the year preceding the year to which they will apply. Further, the statute requires that the agency

determine and publish the inpatient hospital deductible and hospital and extended care services coinsurance amounts for each CY in accordance with the statutory formulas, and we are simply notifying the public of the changes to the deductible and coinsurance amounts for CY 2024. We have calculated the inpatient hospital deductible and hospital and extended care services coinsurance amounts as directed by the statute; the statute establishes both when the deductible and coinsurance amounts must be published and what information must be considered by the Secretary in establishing the deductible and coinsurance amounts, and therefore we do not have any discretion in that regard. We find notice and comment procedures to be unnecessary for this notice and we find good cause to waive such procedures under section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act, if such procedures may be construed to be required at all. Through this notice, we are simply notifying the public of the updates to the inpatient hospital deductible and the hospital and extended care services coinsurance amounts, in accordance with the statute, for CY 2024. As such, we note that even if notice and comment procedures were required for this notice, for the reasons stated above, we would find good cause to waive the delay in effective date of the notice, as additional delay would be contrary to the public interest under section 1871(e)(1)(B)(ii) of the Act. Publication of this notice is consistent with section 1813(b)(2) of the Act, and we believe that any potential delay in the effective date of the notice, if such delay were required at all, could cause unnecessary confusion both for the agency and Medicare beneficiaries.

VI. 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.*).

VII. Regulatory Impact Analysis

Although this notice does not constitute a substantive rule, we nevertheless prepared this Regulatory Impact Analysis section in the interest of ensuring that the impacts of this notice are fully understood.

A. Statement of Need

This notice announces the Medicare Part A inpatient hospital deductible and associated coinsurance amounts for hospital and extended care services applicable for care provided in CY 2024, as required by section 1813 of the Act. It also responds to section 1813(b)(2) of the Act, which requires the Secretary to provide for publication of these amounts in the **Federal Register** between September 1 and September 15 of the year preceding the year to which they will apply. As this statutory provision prescribes a detailed methodology for calculating these amounts, we do not have the discretion to adopt an alternative approach on these issues.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), Executive Order 14094 entitled ''Modernizing Regulatory Review'' (April 6, 2023), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

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). The Executive Order 14094 entitled ''Modernizing Regulatory Review'' (hereinafter, the Modernizing E.O.) amends section 3(f)(1) of Executive Order 12866 (Regulatory Planning and Review). The amended section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $200 million or more in any 1 year (adjusted every 3 years by the Administrator of the Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product) or adversely affecting in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities; (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising legal or policy issues, for which a centralized review would meaningfully further the President's priorities, or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

A regulatory impact analysis (RIA) must be prepared for major rules with significant regulatory action/s and/or significant effects as per section 3(f)(1) of Executive Order 12866 ($200 million or more in any 1 year). Based on our estimates OMB's Office of Information and Regulatory Affairs has determined that this rulemaking is significant per section 3(f)(1) as measured by the $200 million or more in any 1 year, and hence also a major rule under Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act).

As stated in section IV of this notice, we estimate that the total decrease in costs to beneficiaries associated with this notice is about $240 million because of (1) the increase in the deductible and coinsurance amounts and (2) the decrease in the number of deductibles and daily coinsurance amounts paid.

C. Accounting Statement and Table

As required by OMB Circular A–4 (available at *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf*), in Table 2, we have prepared an accounting statement showing the estimated total decrease in costs to beneficiaries of about $240 million, which is due to the increase in the deductible and coinsurance amounts and the decrease in the number of deductibles and daily coinsurance amounts paid. As stated in section IV of this notice, we determined the decrease in cost to beneficiaries by calculating the difference between the CY 2023 and CY 2024 deductible and coinsurance amounts multiplied by the estimated decrease in the number of deductible and coinsurance amounts paid.

TABLE 2—ESTIMATED TRANSFERS FOR CY 2024 DEDUCTIBLE AND COINSURANCE AMOUNTS

Category	Transfers
Annualized monetized transfers	−$240 million.
From Whom to Whom	Beneficiaries to Providers.

D. Regulatory Flexibility Act

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by being nonprofit organizations or by meeting the Small Business Administration's definition of a small business (having revenues of less than $9.0 million to $47 million in any 1 year). Individuals and states are not included in the definition of a small entity. This annual notice announces the Medicare Part A deductible and coinsurance amounts for CY 2024 and will have an impact on certain Medicare beneficiaries. As a result, we are not preparing an analysis for the RFA because the Secretary has certified that this notice will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare an RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This annual notice announces the Medicare Part A deductible and coinsurance amounts for CY 2024 and will have an impact on certain Medicare beneficiaries. As a result, we are not preparing an analysis for section 1102(b) of the Act because the Secretary has certified that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

E. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2023, that threshold is approximately $177 million. This notice will not impose a mandate that will result in the expenditure by state, local, and Tribal Governments, in the aggregate, or by the private sector, of more than $177 million in any 1 year.

F. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. This notice will not have a substantial direct effect on state or local governments, preempt state law, or otherwise have Federalism implications.

G. Congressional Review

This notice is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to the Congress and the Comptroller General for review.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on October 11, 2023.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2023–22850 Filed 10–12–23; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8085–N]

RIN 0938–AV13

Medicare Program; Medicare Part B Monthly Actuarial Rates, Premium Rates, and Annual Deductible Beginning January 1, 2024

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the monthly actuarial rates for aged (age 65 and over) and disabled (under age 65) beneficiaries enrolled in Part B of the Medicare Supplementary Medical Insurance (SMI) program beginning January 1, 2024. In addition, this notice announces the monthly premium for aged and disabled beneficiaries, the deductible for 2024, and the income-related monthly adjustment amounts to be paid by beneficiaries with modified adjusted gross income above certain threshold amounts. The monthly actuarial rates for 2024 are $343.40 for aged enrollees and $427.20 for disabled enrollees. The standard monthly Part B premium rate for all enrollees for 2024 is $174.70, which is equal to 50 percent of the monthly actuarial rate for aged enrollees (or approximately 25 percent of the expected average total cost of Part B coverage for aged enrollees) plus the $3.00 repayment amount required under current law. (The 2024 premium is 5.9 percent or $9.80 higher than the 2023 standard premium rate of $164.90, which included the $3.00 repayment amount.) The Part B deductible for 2024 is $240.00 for all Part B beneficiaries. If a beneficiary has to pay an income-related monthly adjustment amount, that individual will have to pay a total monthly premium of about 35, 50, 65, 80, or 85 percent of the total cost of Part B coverage plus a repayment amount of $4.20, $6.00, $7.80, $9.60, or $10.20, respectively. Beginning in 2023, certain Medicare enrollees who are 36 months post kidney transplant, and therefore are no longer eligible for full Medicare coverage, can elect to continue Part B coverage of immunosuppressive drugs by paying a premium. For 2024, the immunosuppressive drug premium is $103.00.

DATES: The monthly actuarial rates are effective on January 1, 2024.

FOR FURTHER INFORMATION CONTACT: M. Kent Clemens, (410) 786–6391.

SUPPLEMENTARY INFORMATION:

I. Background

Part B is the voluntary portion of the Medicare program that pays all or part of the costs for physicians' services; outpatient hospital services; certain home health services; services furnished by rural health clinics, ambulatory surgical centers, and comprehensive outpatient rehabilitation facilities; and certain other medical and health services not covered by Medicare Part

A, Hospital Insurance. Medicare Part B is available to individuals who are entitled to Medicare Part A, as well as to U.S. residents who have attained age 65 and are citizens and to non-citizens who were lawfully admitted for permanent residence and have resided in the United States for 5 consecutive years. Part B requires enrollment and payment of monthly premiums, as described in 42 CFR part 407, subpart B, and part 408, respectively. The premiums paid by (or on behalf of) all enrollees fund approximately one-fourth of the total incurred costs, and transfers from the general fund of the Treasury pay approximately three-fourths of these costs.

The Secretary of Health and Human Services (the Secretary) is required by section 1839 of the Social Security Act (the Act) to announce the Part B monthly actuarial rates for aged and disabled beneficiaries as well as the monthly Part B premium. The Part B annual deductible, income-related monthly adjustment amounts, and the immunosuppressive drug premium are included because their determinations are directly linked to the aged actuarial rate.

The monthly actuarial rates for aged and disabled enrollees are used to determine the correct amount of general revenue financing per beneficiary each month. These amounts, according to actuarial estimates, will equal, respectively, one-half of the expected average monthly cost of Part B for each aged enrollee (age 65 or over) and one-half of the expected average monthly cost of Part B for each disabled enrollee (under age 65).

The Part B deductible to be paid by enrollees is also announced. Prior to the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173), the Part B deductible was set in statute. After setting the 2005 deductible amount at $110.00, section 629 of the MMA (amending section 1833(b) of the Act) required that the Part B deductible be indexed beginning in 2006. The inflation factor to be used each year is the annual percentage increase in the Part B actuarial rate for enrollees age 65 and over. Specifically, the 2024 Part B deductible is calculated by multiplying the 2023 deductible by the ratio of the 2024 aged actuarial rate to the 2023 aged actuarial rate. The amount determined under this formula is then rounded to the nearest $1.00.

The monthly Part B premium rate to be paid by aged and disabled enrollees is also announced. (Although the costs to the program per disabled enrollee are different than for the aged, the statute provides that the two groups pay the same premium amount.) Beginning with the passage of section 203 of the Social Security Amendments of 1972 (Pub. L. 92–603), the premium rate, which was determined on a fiscal-year basis, was limited to the lesser of the actuarial rate for aged enrollees, or the current monthly premium rate increased by the same percentage as the most recent general increase in monthly Title II Social Security benefits.

However, the passage of section 124 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248) suspended this premium determination process. Section 124 of TEFRA changed the premium basis to 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees). Section 606 of the Social Security Amendments of 1983 (Pub. L. 98–21), section 2302 of the Deficit Reduction Act of 1984 (DEFRA 84) (Pub. L. 98–369), section 93130 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA 85) (Pub. L. 99–272), section 4080 of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87) (Pub. L. 100–203), and section 6301 of the Omnibus Budget Reconciliation Act of 1989 (OBRA 89) (Pub. L. 101–239) extended the provision that the premium be based on 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees). This extension expired at the end of 1990.

The premium rate for 1991 through 1995 was legislated by section 1839(e)(1)(B) of the Act, as added by section 4301 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90) (Pub. L. 101–508). In January 1996, the premium determination basis would have reverted to the method established by the 1972 Social Security Act Amendments. However, section 13571 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 93) (Pub. L. 103–66) changed the premium basis to 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees) for 1996 through 1998.

Section 4571 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) permanently extended the provision that the premium be based on 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees).

The BBA included a further provision affecting the calculation of the Part B actuarial rates and premiums for 1998 through 2003. Section 4611 of the BBA modified the home health benefit payable under Part A for individuals enrolled in Part B. Under this section, beginning in 1998, expenditures for home health services not considered ''post-institutional'' are payable under Part B rather than Part A. However, section 4611(e)(1) of the BBA required that there be a transition from 1998 through 2002 for the aggregate amount of the expenditures transferred from Part A to Part B. Section 4611(e)(2) of the BBA also provided a specific yearly proportion for the transferred funds. The proportions were one-sixth for 1998, one-third for 1999, one-half for 2000, two-thirds for 2001, and five-sixths for 2002. For the purpose of determining the correct amount of financing from general revenues of the Federal Government, it was necessary to include only these transitional amounts in the monthly actuarial rates for both aged and disabled enrollees, rather than the total cost of the home health services being transferred.

Section 4611(e)(3) of the BBA also specified, for the purpose of determining the premium, that the monthly actuarial rate for enrollees age 65 and over be computed as though the transition would occur for 1998 through 2003 and that one-seventh of the cost be transferred in 1998, two-sevenths in 1999, three-sevenths in 2000, four-sevenths in 2001, five-sevenths in 2002, and six-sevenths in 2003. Therefore, the transition period for incorporating this home health transfer into the premium was 7 years while the transition period for including these services in the actuarial rate was 6 years.

Section 811 of the MMA, which amended section 1839 of the Act, requires that, starting on January 1, 2007, the Part B premium a beneficiary pays each month be based on that individual's annual income. (The MMA specified that there be a 5-year transition period to reach full implementation of this provision. However, section 5111 of the Deficit Reduction Act of 2005 (DRA) (Pub. L. 109–171) modified the transition to a 3-year period, which ended in 2009.) Specifically, if a beneficiary's modified adjusted gross income is greater than the legislated threshold amounts (for 2024, $103,000 for a beneficiary filing an individual income tax return and $206,000 for a beneficiary filing a joint tax return), the beneficiary is responsible for a larger portion of the estimated total cost of Part B benefit coverage. In addition to the standard 25-percent premium, these beneficiaries now have to pay an income-related monthly adjustment amount. The MMA made no change to the actuarial rate calculation, and the standard premium, which will continue to be paid by

beneficiaries whose modified adjusted gross income is below the applicable thresholds, still represents 25 percent of the estimated total cost to the program of Part B coverage for an aged enrollee. However, depending on income and tax filing status, a beneficiary can now be responsible for 35, 50, 65, 80, or 85 percent of the estimated total cost of Part B coverage, rather than 25 percent. Section 402 of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) (Pub. L. 114–10) modified the income thresholds beginning in 2018, and section 53114 of the Bipartisan Budget Act of 2018 (BBA of 2018) (Pub. L. 115–123) further modified the income thresholds beginning in 2019. For years beginning in 2019, the BBA of 2018 established a new income threshold. If a beneficiary's modified adjusted gross income is greater than or equal to $500,000 for a beneficiary filing an individual income tax return and $750,000 for a beneficiary filing a joint tax return, the beneficiary is responsible for 85 percent of the estimated total cost of Part B coverage. The BBA of 2018 specified that these new income threshold levels be inflation-adjusted beginning in 2028. The end result of the higher premium is that the Part B premium subsidy is reduced, and less general revenue financing is required, for beneficiaries with higher income because they are paying a larger share of the total cost with their premium. That is, the premium subsidy continues to be approximately 75 percent for beneficiaries with income below the applicable income thresholds, but it will be reduced for beneficiaries with income above these thresholds.

The Consolidated Appropriations Act, 2021 (Pub. L. 116–260) established a new basis for Medicare Part B eligibility for post-kidney-transplant immunosuppressive drug coverage only. Medicare eligibility due solely to end-stage renal disease generally ends 36 months after a successful kidney transplant. Beginning in 2023, post-kidney-transplant individuals without certain types of insurance coverage can elect to enroll in Part B and receive coverage of immunosuppressive drugs only. The premium for this continuation of coverage is 15 percent of a different aged actuarial rate, which is equal to 100 percent of costs for aged enrollees (rather than the standard aged actuarial rate, which is equal to one-half of the costs for aged enrollees). Enrollees paying the immunosuppressive premium are not subject to the late enrollment penalty and the $3.00 repayment amounts, but they are subject to the hold-harmless provision (described later) and the income-related monthly adjustment amounts. The law requires transfers equal to the reduction in aggregate premiums payable that results from enrollees with coverage only for immunosuppressive drugs paying the immunosuppressive drug Part B premium rather than the standard Part B premium. These transfers are to be treated as premiums payable for general revenue matching purposes.

Section 4732(c) of the BBA added section 1933(c) of the Act, which required the Secretary to allocate money from the Part B trust fund to the State Medicaid programs for the purpose of providing Medicare Part B premium assistance from 1998 through 2002 for the low-income Medicaid beneficiaries who qualify under section 1933 of the Act. This allocation, while not a benefit expenditure, was an expenditure of the trust fund and was included in calculating the Part B actuarial rates through 2002. For 2003 through 2015, the expenditure was made from the trust fund because the allocation was temporarily extended. However, because the extension occurred after the financing was determined, the allocation was not included in the calculation of the financing rates for these years. Section 211 of MACRA permanently extended this expenditure, which is included in the calculation of the Part B actuarial rates for 2016 and subsequent years.

Another provision affecting the calculation of the Part B premium is section 1839(f) of the Act, as amended by section 211 of the Medicare Catastrophic Coverage Act of 1988 (MCCA 88) (Pub. L. 100–360). (The Medicare Catastrophic Coverage Repeal Act of 1989 (Pub. L. 101–234) did not repeal the revisions to section 1839(f) of the Act made by MCCA 88.) Section 1839(f) of the Act, referred to as the hold-harmless provision, provides that, if an individual is entitled to benefits under section 202 or 223 of the Act (the Old-Age and Survivors Insurance Benefit and the Disability Insurance Benefit, respectively) and has the Part B premium deducted from these benefit payments, the premium increase will be reduced, if necessary, to avoid causing a decrease in the individual's net monthly payment. This decrease in payment occurs if the increase in the individual's Social Security benefit due to the cost-of-living adjustment under section 215(i) of the Act is less than the increase in the premium. Specifically, the reduction in the premium amount applies if the individual is entitled to benefits under section 202 or 223 of the Act for November and December of a particular year and the individual's Part B premiums for December and the following January are deducted from the respective month's section 202 or 223 benefits. The hold-harmless provision does not apply to beneficiaries who are required to pay an income-related monthly adjustment amount.

A check for benefits under section 202 or 223 of the Act is received in the month following the month for which the benefits are due. The Part B premium that is deducted from a particular check is the Part B payment for the month in which the check is received. Therefore, a benefit check for November is not received until December, but December's Part B premium has been deducted from it.

Generally, if a beneficiary qualifies for hold-harmless protection, the reduced premium for the individual for that January and for each of the succeeding 11 months is the greater of either—

- The monthly premium for January reduced as necessary to make the December monthly benefits, after the deduction of the Part B premium for January, at least equal to the preceding November's monthly benefits, after the deduction of the Part B premium for December; or
- The monthly premium for that individual for that December.

In determining the premium limitations under section 1839(f) of the Act, the monthly benefits to which an individual is entitled under section 202 or 223 of the Act do not include retroactive adjustments or payments and deductions on account of work. Also, once the monthly premium amount is established under section 1839(f) of the Act, it will not be changed during the year even if there are retroactive adjustments or payments and deductions on account of work that apply to the individual's monthly benefits.

Individuals who have enrolled in Part B late or who have re-enrolled after the termination of a coverage period are subject to an increased premium under section 1839(b) of the Act. The increase is a percentage of the premium and is based on the new premium rate before any reductions under section 1839(f) of the Act are made.

Section 1839 of the Act, as amended by section 601(a) of the Bipartisan Budget Act of 2015 (Pub. L. 114–74), specified that the 2016 actuarial rate for enrollees age 65 and older be determined as if the hold-harmless provision did not apply. The premium revenue that was lost by using the resulting lower premium (excluding the forgone income-related premium revenue) was replaced by a transfer of general revenue from the Treasury,

which will be repaid over time to the general fund.

Similarly, section 1839 of the Act, as amended by section 2401 of the Continuing Appropriations Act, 2021 and Other Extensions Act (Pub. L. 116–159), specified that the 2021 actuarial rate for enrollees age 65 and older be determined as the sum of the 2020 actuarial rate for enrollees age 65 and older and one-fourth of the difference between the 2020 actuarial rate and the preliminary 2021 actuarial rate (as determined by the Secretary) for such enrollees. The premium revenue lost by using the resulting lower premium (excluding the forgone income-related premium revenue) was replaced by a transfer of general revenue from the Treasury, which will be repaid over time.

Starting in 2016, in order to repay the balance due (which includes the transfer amounts and the forgone income-related premium revenue from the Bipartisan Budget Act of 2015 and the Continuing Appropriations Act, 2021 and Other Extensions Act), the Part B premium otherwise determined will be increased by $3.00. These repayment amounts will be added to the Part B premium otherwise determined each year and will be paid back to the general fund of the Treasury, and they will continue until the balance due is paid back.

High-income enrollees pay the $3.00 repayment amount plus an additional $1.20, $3.00, $4.80, $6.60, or $7.20 in repayment as part of the income-related monthly adjustment amount (IRMAA) premium dollars, which reduce (dollar for dollar) the amount of general revenue received by Part B from the general fund of the Treasury. Because of this general revenue offset, the repayment IRMAA premium dollars are not included in the direct repayments made to the general fund of the Treasury from Part B in order to avoid a double repayment. (Only the $3.00 monthly repayment amounts are included in the direct repayments.)

These repayment amounts will continue until the balance due is zero. (In the final year of the repayment, the additional amounts may be modified to avoid an overpayment.) The repayment amounts (excluding those for high-income enrollees) are subject to the hold-harmless provision. The original balance due was $9,066,409,000, consisting of $1,625,761,000 in forgone income-related premium revenue plus a transfer amount of $7,440,648,000 from the provisions of the Bipartisan Budget Act of 2015. The increase in the balance due in 2021 was $8,799,829,000, consisting of $946,046,000 in forgone income-related premium income plus a transfer amount of $7,853,783,000 from the provisions of the Continuing Appropriations Act, 2021 and Other Extensions Act. An estimated $14,624,044,000 will have been repaid to the general fund by the end of 2023, with an estimated $3,242,194,000 remaining to be repaid.

II. Provisions of the Notice

A. Notice of Medicare Part B Monthly Actuarial Rates, Monthly Premium Rates, and Annual Deductible

The Medicare Part B monthly actuarial rates applicable for 2024 are $343.40 for enrollees age 65 and over and $427.20 for disabled enrollees under age 65. In section II.B. of this notice, we present the actuarial assumptions and bases from which these rates are derived. The Part B standard monthly premium rate for all enrollees for 2024 is $174.70. The Part B immunosuppressive drug premium is $103.00.

The following are the 2024 Part B monthly premium rates to be paid by (or on behalf of) beneficiaries with full Part B coverage who file either individual tax returns (and are single individuals, heads of households, qualifying widows or widowers with dependent children, or married individuals filing separately who lived apart from their spouses for the entire taxable year) or joint tax returns.

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Full Part B Coverage			
Beneficiaries who file individual tax returns with modified adjusted gross income:	**Beneficiaries who file joint tax returns with modified adjusted gross income:**	**Income-Related Monthly Adjustment Amount**	**Total Monthly Premium Amount**
Less than or equal to $103,000	Less than or equal to $206,000	$0.00	$174.70
Greater than $103,000 and less than or equal to $129,000	Greater than $206,000 and less than or equal to $258,000	$69.90	$244.60
Greater than $129,000 and less than or equal to $161,000	Greater than $258,000 and less than or equal to $322,000	$174.70	$349.40
Greater than $161,000 and less than or equal to $193,000	Greater than $322,000 and less than or equal to $386,000	$279.50	$454.20
Greater than $193,000 and less than $500,000	Greater than $386,000 and less than $750,000	$384.30	$559.00
Greater than or equal to $500,000	Greater than or equal to $750,000	$419.30	$594.00

For beneficiaries with immunosuppressive drug only Part B coverage, who file either individual tax returns (and are single individuals, heads of households, qualifying widows or widowers with dependent children, or married individuals filing separately who lived apart from their spouses for the entire taxable year) or joint tax returns, the 2024 Part B monthly premium rates are shown below.

Part B Immunosuppressive Drug Coverage Only			
Beneficiaries who file individual tax returns with modified adjusted gross income:	**Beneficiaries who file joint tax returns with modified adjusted gross income:**	**Income-Related Monthly Adjustment Amount**	**Total Monthly Premium Amount**
Less than or equal to $103,000	Less than or equal to $206,000	$0.00	$103.00
Greater than $103,000 and less than or equal to $129,000	Greater than $206,000 and less than or equal to $258,000	$68.70	$171.70
Greater than $129,000 and less than or equal to $161,000	Greater than $258,000 and less than or equal to $322,000	$171.70	$274.70
Greater than $161,000 and less than or equal to $193,000	Greater than $322,000 and less than or equal to $386,000	$274.70	$377.70
Greater than $193,000 and less than $500,000	Greater than $386,000 and less than $750,000	$377.70	$480.70
Greater than or equal to $500,000	Greater than or equal to $750,000	$412.10	$515.10

In addition, the monthly premium rates to be paid by (or on behalf of) beneficiaries with full Part B coverage who are married and lived with their spouses at any time during the taxable year, but who file separate tax returns from their spouses, are as follows:

Full Part B Coverage		
Beneficiaries who are married and lived with their spouses at any time during the year, but who file separate tax returns from their spouses, with modified adjusted gross income:	**Income-Related Monthly Adjustment Amount**	**Total Monthly Premium Amount**
Less than or equal to $103,000	$0.00	$174.70
Greater than $103,000 and less than $397,000	$384.30	$559.00
Greater than or equal to $397,000	$419.30	$594.00

The monthly premium rates to be paid by (or on behalf of) beneficiaries with immunosuppressive drug only Part B coverage who are married and lived with their spouses at any time during the taxable year, but who file separate tax returns from their spouses, are as follows:

Part B Immunosuppressive Drug Coverage Only		
Beneficiaries who are married and lived with their spouses at any time during the year, but who file separate tax returns from their spouses, with modified adjusted gross income:	**Income-Related Monthly Adjustment Amount**	**Total Monthly Premium Amount**
Less than or equal to $103,000	$0.00	$103.00
Greater than $103,000 and less than $397,000	$377.70	$480.70
Greater than or equal to $397,000	$412.10	$515.10

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The Part B annual deductible for 2024 is $240.00 for all beneficiaries.

B. Statement of Actuarial Assumptions and Bases Employed in Determining the Monthly Actuarial Rates and the Monthly Premium Rate for Part B Beginning January 2024

Except where noted, the actuarial assumptions and bases used to determine the monthly actuarial rates and the monthly premium rates for Part B are established by the Centers for Medicare & Medicaid Services' Office of the Actuary. The estimates underlying these determinations are prepared by actuaries meeting the qualification standards and following the actuarial standards of practice established by the Actuarial Standards Board.

1. Actuarial Status of the Part B Account in the Supplementary Medical Insurance Trust Fund

Under section 1839 of the Act, the starting point for determining the standard monthly premium is the amount that would be necessary to finance Part B on an incurred basis. This is the amount of income that would be sufficient to pay for services furnished during that year (including associated administrative costs) even though payment for some of these services will not be made until after the close of the year. The portion of income required to cover benefits not paid until after the close of the year is added to the trust fund and used when needed.

Because the premium rates are established prospectively, they are subject to projection error. Additionally, legislation enacted after the financing was established, but effective for the period in which the financing is set, may affect program costs. As a result, the income to the program may not equal incurred costs. Trust fund assets must therefore be maintained at a level that is adequate to cover an appropriate degree of variation between actual and projected costs, and the amount of incurred, but unpaid, expenses. Numerous factors determine what level of assets is appropriate to cover variation between actual and projected costs. For 2024, the four most important of these factors are (1) the impact of expected additional payments from the Part B account to 340B providers in response to a judicial remand order; (2) the difference from prior years between the actual performance of the program and estimates made at the time financing was established; (3) the likelihood and potential magnitude of expenditure changes resulting from enactment of legislation affecting Part B costs in a year subsequent to the

establishment of financing for that year; and (4) the expected relationship between incurred and cash expenditures. The projected costs have a somewhat higher degree of uncertainty for 2024 due to the impact of the judicial remand order resulting in additional 340B drug payments. The other three factors are analyzed on an ongoing basis, as the trends can vary over time.

Table 1 summarizes the estimated actuarial status of the trust fund as of the end of the financing period for 2022 and 2023.

TABLE 1—ESTIMATED ACTUARIAL STATUS OF THE PART B ACCOUNT IN THE SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND AS OF THE END OF THE FINANCING PERIOD

Financing Period Ending	Assets[1] (in millions)	Liabilities[2] (in millions)	Assets less Liabilities[1] (in millions)
December 31, 2022	$194,215	$34,152	$160,063
December 31, 2023	$165,586	$34,708	$130,878

[1] In the unique context of a pending rulemaking on remand from a court, we have assumed remedy payments of $10.5 billion based on the amount we have proposed to pay providers (88 FR 44093), but that number is subject to any changes made in the final policy or by future, subsequent events, per our previous discussion of projection error. We also anticipate that, should we finalize proposed payment decreases in future years to providers, we will account for those savings in those future years.

[2] These amounts include only items incurred but not paid. They do not include the amounts that are to be paid back to the general fund of the Treasury over time as specified by section 1839 of the Act as amended by section 601(a) of the Bipartisan Budget Act of 2015 and further amended by section 2401 of the Continuing Appropriations Act, 2021 and Other Extensions Act, nor do they include the Accelerated and Advance Payments Program amounts that are to be repaid by providers and returned to the general fund of the Treasury.

2. Monthly Actuarial Rate for Enrollees Age 65 and Older

The monthly actuarial rate for enrollees age 65 and older is one-half of the sum of monthly amounts for (1) the projected cost of benefits and (2) administrative expenses for each enrollee age 65 and older, after adjustments to this sum to allow for interest earnings on assets in the trust fund and an adequate contingency margin. The contingency margin is an amount appropriate to provide for possible variation between actual and projected costs and to amortize any surplus assets or unfunded liabilities.

The monthly actuarial rate for enrollees age 65 and older for 2024 is determined by first establishing per enrollee costs by type of service from program data through 2021 and then projecting these costs for subsequent years. The projection factors used for financing periods from January 1, 2021 through December 31, 2024 are shown in Table 2.

As indicated in Table 3, the projected per enrollee amount required to pay for one-half of the total of benefits and administrative costs for enrollees age 65 and over for 2024 is $349.10. Based on current estimates, the assets at the end of 2023 are sufficient to cover the amount of incurred, but unpaid, expenses, to provide for substantial variation between actual and projected costs. Thus, a negative contingency margin can be included to decrease assets to a more appropriate level. The monthly actuarial rate of $343.40 provides an adjustment of −$3.30 for a contingency margin and −$2.40 for interest earnings.

The contingency margin for 2024 is affected by several factors. Additional payments to 340B drug providers from Part B are expected as a result of a judicial remand order. In the unique context of a pending rulemaking on remand from a court, we anticipate that additional 340B payments will reduce the surplus in 2024, resulting in a higher contingency margin. We also anticipate that, should we finalize proposed payment decreases in future years to providers, that would result in correspondingly lower Part B financing rates in those years. Another factor affecting Part B costs is the broader coverage for certain newly-approved drugs that treat Alzheimer's disease starting in July 2023. The broader coverage of these drugs results in a somewhat higher contingency margin. The Part B projected program costs were developed based on these assumptions and were included in the margin development.

In addition, starting in 2011, manufacturers and importers of brand-name prescription drugs pay a fee that is allocated to the Part B account of the SMI trust fund. For 2024, the total of these brand-name drug fees is estimated to be $2.8 billion. The contingency margin for 2024 has been reduced to account for this additional revenue.

The traditional goal for the Part B reserve has been that assets minus liabilities at the end of a year should represent between 15 and 20 percent of the following year's total incurred expenditures. To accomplish this goal, a 17-percent reserve ratio, which is a fully adequate contingency reserve level, has been the normal target used to calculate the Part B premium. At the end of 2023, the reserve ratio is expected to be 25.3 percent. When the reserve ratio is considerably higher than 20 percent, the typical approach in the premium determination is to target a gradual reduction in the reserve ratio to 20 percent over a number of years. The Secretary, who determines the Part B premium each year under section 1839 of the Act, directed the Office of the Actuary to use a 2024 premium increase of 5.9 percent, which targets a reserve ratio for the Part B premium determination of 22.6 percent by the end of 2024.

The actuarial rate of $343.40 per month for aged beneficiaries, as announced in this notice for 2024, reflects the combined effect of the factors and legislation previously described and the projected assumptions listed in Table 2.

3. Monthly Actuarial Rate for Disabled Enrollees

Disabled enrollees are those persons under age 65 who are enrolled in Part B because of entitlement to Social Security disability benefits for more than 24 months or because of entitlement to Medicare under the end-stage renal disease (ESRD) program. Projected monthly costs for disabled enrollees (other than those with ESRD) are prepared in a manner parallel to the projection for the aged using

appropriate actuarial assumptions (see Table 2). Costs for the ESRD program are projected differently because of the different nature of services offered by the program.

As shown in Table 4, the projected per enrollee amount required to pay for one-half of the total of benefits and administrative costs for disabled enrollees for 2024 is $436.36. The monthly actuarial rate of $427.20 also provides an adjustment of −$2.39 for interest earnings and −$6.77 for a contingency margin, reflecting the same factors and legislation described previously for the aged actuarial rate at magnitudes applicable to the disabled rate determination. Based on current estimates, the assets associated with the disabled Medicare beneficiaries at the end of 2023 are sufficient to cover the amount of incurred, but unpaid, expenses and to provide for a significant degree of variation between actual and projected costs.

The actuarial rate of $427.20 per month for disabled beneficiaries, as announced in this notice for 2024, reflects the combined net effect of the factors and legislation described previously for aged beneficiaries and the projection assumptions listed in Table 2.

4. Sensitivity Testing

Several factors contribute to uncertainty about future trends in medical care costs. It is appropriate to test the adequacy of the rates using alternative cost growth rate assumptions, the results of which are shown in Table 5. One set represents increases that are higher and, therefore, more pessimistic than the current estimate, and the other set represents increases that are lower and, therefore, more optimistic than the current estimate. The values for the alternative assumptions were determined from a statistical analysis of the historical variation in the respective increase factors.

As indicated in Table 5, the monthly actuarial rates would result in an excess of assets over liabilities of $128,583 million by the end of December 2024 under the cost growth rate assumptions shown in Table 2 and under the assumption that the provisions of current law are fully implemented. This result amounts to 21.9 percent of the estimated total incurred expenditures for the following year.

Assumptions that are somewhat more pessimistic (and that therefore test the adequacy of the assets to accommodate projection errors) produce a surplus of $64,240 million by the end of December 2024 under current law, which amounts to 9.7 percent of the estimated total incurred expenditures for the following year. Under fairly optimistic assumptions, the monthly actuarial rates would result in a surplus of $212,701 million by the end of December 2024, or 41.0 percent of the estimated total incurred expenditures for the following year.

The sensitivity analysis indicates that, in a typical year, the premium and general revenue financing established for 2024, together with existing Part B account assets, would be adequate to cover estimated Part B costs for 2024 under current law, should actual costs prove to be somewhat greater than expected.

5. Premium Rates and Deductible

As determined in accordance with section 1839 of the Act, the following are the 2024 Part B monthly premium rates to be paid by (or on behalf of) beneficiaries with full Part B coverage who file either individual tax returns (and are single individuals, heads of households, qualifying widows or widowers with dependent children, or married individuals filing separately who lived apart from their spouses for the entire taxable year) or joint tax returns.

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Full Part B Coverage			
Beneficiaries who file individual tax returns with modified adjusted gross income:	**Beneficiaries who file joint tax returns with modified adjusted gross income:**	**Income-Related Monthly Adjustment Amount**	**Total Monthly Premium Amount**
Less than or equal to $103,000	Less than or equal to $206,000	$0.00	$174.70
Greater than $103,000 and less than or equal to $129,000	Greater than $206,000 and less than or equal to $258,000	$69.90	$244.60
Greater than $129,000 and less than or equal to $161,000	Greater than $258,000 and less than or equal to $322,000	$174.70	$349.40
Greater than $161,000 and less than or equal to $193,000	Greater than $322,000 and less than or equal to $386,000	$279.50	$454.20
Greater than $193,000 and less than $500,000	Greater than $386,000 and less than $750,000	$384.30	$559.00
Greater than or equal to $500,000	Greater than or equal to $750,000	$419.30	$594.00

For beneficiaries with immunosuppressive drug only Part B coverage who file either individual tax returns (and are single individuals, heads of households, qualifying widows or widowers with dependent children, or married individuals filing separately who lived apart from their spouses for the entire taxable year) or joint tax returns, the 2024 Part B monthly premium rates are shown below.

Part B Immunosuppressive Drug Coverage Only			
Beneficiaries who file individual tax returns with modified adjusted gross income:	**Beneficiaries who file joint tax returns with modified adjusted gross income:**	**Income-Related Monthly Adjustment Amount**	**Total Monthly Premium Amount**
Less than or equal to $103,000	Less than or equal to $206,000	$0.00	$103.00
Greater than $103,000 and less than or equal to $129,000	Greater than $206,000 and less than or equal to $258,000	$68.70	$171.70
Greater than $129,000 and less than or equal to $161,000	Greater than $258,000 and less than or equal to $322,000	$171.70	$274.70
Greater than $161,000 and less than or equal to $193,000	Greater than $322,000 and less than or equal to $386,000	$274.70	$377.70
Greater than $193,000 and less than $500,000	Greater than $386,000 and less than $750,000	$377.70	$480.70
Greater than or equal to $500,000	Greater than or equal to $750,000	$412.10	$515.10

In addition, the monthly premium rates to be paid by (or on behalf of) beneficiaries with full Part B coverage who are married and lived with their spouses at any time during the taxable year, but who file separate tax returns from their spouses, are as follows:

Full Part B Coverage		
Beneficiaries who are married and lived with their spouses at any time during the year, but who file separate tax returns from their spouses, with modified adjusted gross income:	**Income-Related Monthly Adjustment Amount**	**Total Monthly Premium Amount**
Less than or equal to $103,000	$0.00	$174.70
Greater than $103,000 and less than $397,000	$384.30	$559.00
Greater than or equal to $397,000	$419.30	$594.00

The monthly premium rates to be paid by (or on behalf of) beneficiaries with immunosuppressive drug only Part B coverage who are married and lived with their spouses at any time during the taxable year, but who file separate tax returns from their spouses, are as follows:

Part B Immunosuppressive Drug Coverage Only		
Beneficiaries who are married and lived with their spouses at any time during the year, but who file separate tax returns from their spouses, with modified adjusted gross income:	**Income-Related Monthly Adjustment Amount**	**Total Monthly Premium Amount**
Less than or equal to $103,000	$0.00	$103.00
Greater than $103,000 and less than $397,000	$377.70	$480.70
Greater than or equal to $397,000	$412.10	$515.10

The Part B annual deductible for 2024 is $240.00 for all beneficiaries.

TABLE 2—PROJECTION FACTORS[1]
12-MONTH PERIODS ENDING DECEMBER 31 OF 2021–2024 (IN PERCENT)

Calendar Year	Physician Fee Schedule	Durable Medical Equipment	Practitioner Lab[2]	Physician-Administered Drugs	Other Practitioner Services[3]	Outpatient Hospital	Home Health Agency	Hospital Lab[4]	Other Institutional Services[5]	Managed Care
Aged:										
2021	18.6	5.8	20.5	10.8	5.4	19.7	3.9	15.1	4.5	1.8
2022	3.7	15.1	–4.3	11.8	19.9	5.9	–3.0	–2.5	1.6	6.6
2023	3.5	14.9	1.0	12.9	12.3	16.0	12.6	–3.9	9.8	7.3
2024	2.0	–0.8	6.2	8.1	–20.8	9.0	3.4	3.3	4.7	2.9
Disabled:										
2021	15.8	4.0	18.2	15.2	2.7	12.7	4.7	19.6	17.9	2.4
2022	–0.3	11.2	–5.9	18.2	13.0	3.5	0.5	–2.2	5.0	6.2
2023	5.8	12.9	2.3	25.1	16.9	14.1	11.5	–6.4	7.3	7.9
2024	3.0	–0.3	7.3	9.1	–1.5	10.5	7.2	4.4	6.6	1.9

[1] All values for services other than managed care are per fee-for-service enrollee. Managed care values are per managed care enrollee.
[2] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.
[3] Includes ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.
[4] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[5] Includes services furnished in dialysis facilities, rural health clinics, federally qualified health centers, rehabilitation and psychiatric hospitals, etc.

TABLE 3—DERIVATION OF MONTHLY ACTUARIAL RATE FOR ENROLLEES AGE 65 AND OVER FOR FINANCING PERIODS ENDING DECEMBER 31, 2021 THROUGH DECEMBER 31, 2024

	CY 2021	CY 2022	CY 2023	CY 2024
Covered services (at level recognized):				
Physician fee schedule	$69.38	$68.27	$67.10	$66.34
Durable medical equipment	6.14	6.71	7.32	7.04
Practitioner lab[1]	5.16	4.69	4.50	4.63
Physician-administered drugs	18.13	19.23	20.62	22.01
Other practitioner services[2]	8.78	9.99	10.65	8.18
Outpatient hospital	51.83	52.09	57.41	60.65
Home health agency	7.97	7.33	7.84	7.86
Hospital lab[3]	2.35	2.17	1.98	1.98
Other institutional services[4]	17.04	16.43	17.13	17.39
Managed care	140.15	158.01	178.10	188.46
Total services	326.92	344.91	372.66	384.55
Cost sharing:				
Deductible	–7.77	–8.90	–8.65	–9.19
Coinsurance	–27.27	–26.71	–24.85	–23.71
Sequestration of benefits	0.00	–3.86	–6.78	–7.02
Total benefits	291.88	305.42	332.37	344.63
Administrative expenses	4.74	4.74	4.25	4.47
Incurred expenditures	296.61	310.16	336.62	349.10
Value of interest	–1.93	–2.54	–2.95	–2.40
Contingency margin for projection error and to amortize the surplus or deficit	–3.68	26.58	–9.97	–3.30
Monthly actuarial rate	$291.00	$334.20	$323.70	$343.40

[1] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.
[2] Includes ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.
[3] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[4] Includes services furnished in dialysis facilities, rural health clinics, federally qualified health centers, rehabilitation, and psychiatric hospitals, etc.

TABLE 4—DERIVATION OF MONTHLY ACTUARIAL RATE FOR DISABLED ENROLLEES FOR FINANCING PERIODS ENDING DECEMBER 31, 2021, THROUGH DECEMBER 31, 2024

	CY 2021	CY 2022	CY 2023	CY 2024
Covered services (at level recognized):				
Physician fee schedule	$63.39	$56.88	$53.90	$47.48
Durable medical equipment	10.23	10.25	10.39	8.72
Practitioner lab[1]	5.88	5.06	4.55	4.16
Physician-administered drugs	16.23	17.33	19.35	17.93
Other practitioner services[2]	11.15	10.93	11.35	9.47
Outpatient hospital	56.64	52.57	53.68	50.32
Home health agency	6.38	5.73	5.69	5.16
Hospital lab[3]	2.70	2.41	2.03	1.81
Other institutional services[4]	41.53	36.69	34.85	32.66
Managed care	179.07	213.06	254.30	287.53
Total services	393.19	410.90	450.10	465.24
Cost sharing:				
Deductible	–7.30	–8.36	–8.13	–8.63
Coinsurance	–35.02	–29.61	–26.05	–20.42
Sequestration of benefits	0.00	–4.66	–8.32	–8.72
Total benefits	350.87	368.27	407.60	427.47
Administrative expenses	5.71	5.71	8.12	8.89
Incurred expenditures	356.57	373.98	415.72	436.36
Value of interest	–2.49	–3.34	–3.85	–2.39
Contingency margin for projection error and to amortize the surplus or deficit	–4.18	–1.74	–53.97	–6.77
Monthly actuarial rate	$349.90	$368.90	$357.90	$427.20

[1] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.
[2] Includes ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.
[3] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[4] Includes services furnished in dialysis facilities, rural health clinics, federally qualified health centers, rehabilitation, and psychiatric hospitals, etc.

TABLE 5—ACTUARIAL STATUS OF THE PART B ACCOUNT IN THE SMI TRUST FUND UNDER THREE SETS OF ASSUMPTIONS FOR FINANCING PERIODS THROUGH DECEMBER 31, 2024

As of December 31,	2022	2023	2024
Actuarial status (in millions):			
Assets	$194,215	$165,586	$165,630
Liabilities	$34,152	$34,708	$37,046
Assets less liabilities	$160,063	$130,878	$128,583
Ratio[1]	31.7%	24.5%	21.9%
Low-cost projection:			
Actuarial status (in millions):			
Assets	$194,215	$191,638	$247,692
Liabilities	$34,152	$31,813	$34,991
Assets less liabilities	$160,063	$159,826	$212,701
Ratio[1]	33.7%	32.9%	41.0%
High-cost projection:			
Actuarial status (in millions):			
Assets	$194,215	$140,334	$103,351
Liabilities	$34,152	$37,514	$39,111
Assets less liabilities	$160,063	$102,820	$64,240
Ratio[1]	30.1%	17.6%	9.7%

[1]Ratio of assets less liabilities at the end of the year to the total incurred expenditures during the following year, expressed as a percent.

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III. 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.*).

IV. Regulatory Impact Analysis

A. Statement of Need

This notice announces the monthly actuarial rates and premium rates, as required by section 1839(a) of the Act, and the annual deductible, as required by section 1833(b) of the Act, for beneficiaries enrolled in Part B of the Medicare Supplementary Medical Insurance (SMI) program beginning January 1, 2024. It also responds to section 1839(a)(1) of the Act, which requires the Secretary to provide for

publication of these amounts in the **Federal Register** during the September that precedes the start of each calendar year. As section 1839 prescribes a detailed methodology for calculating these amounts, we do not have the discretion to adopt an alternative approach on these issues.

B. Overall Impact

We have examined the impact of this notice as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), Executive Order 14094 entitled ''Modernizing Regulatory Review'' (April 6, 2023), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

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). The Executive Order 14094 entitled ''Modernizing Regulatory Review'' (hereinafter, the Modernizing E.O.) amends section 3(f)(1) of Executive Order 12866 (Regulatory Planning and Review). The amended section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a notice/rule: (1) having an annual effect on the economy of $200 million or more in any one year (adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product), or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities; (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise legal or policy issues for which centralized review would meaningfully further the President's priorities, or the principles set forth in the Executive Order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

A regulatory impact analysis (RIA) must be prepared for major rules with significant regulatory action/s and/or with significant effects as per section 3(f)(1) ($200 million or more in any one year). Based on our estimates, OMB's Office of Information and Regulatory Affairs has determined this rulemaking is significant per section 3(f)(1) as measured by the $200 million threshold or more in any one year, and hence also a major rule under Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act). The 2024 standard Part B premium of $174.70 is $9.80 higher than the 2023 premium of $164.90. We estimate that the total premium increase, for the approximately 62 million Part B enrollees in 2024, will be $7.3 billion, which is an annual effect on the economy of $200 million or more. Accordingly, we have prepared a Regulatory Impact Analysis that to the best of our ability presents the costs and benefits of the rulemaking. Therefore, OMB has reviewed these proposed regulations, and the Departments have provided the following assessment of their impact.

C. Detailed Economic Analysis

As discussed earlier, this notice announces that the monthly actuarial rates applicable for 2024 are $343.40 for enrollees age 65 and over and $427.20 for disabled enrollees under age 65. It also announces the 2024 monthly Part B premium rates to be paid by (or on behalf of) beneficiaries with full Part B coverage who file either individual tax returns (and are single individuals, heads of households, qualifying widows or widowers with dependent children, or married individuals filing separately who lived apart from their spouses for the entire taxable year) or joint tax returns.

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Full Part B Coverage			
Beneficiaries who file individual tax returns with modified adjusted gross income:	**Beneficiaries who file joint tax returns with modified adjusted gross income:**	**Income-Related Monthly Adjustment Amount**	**Total Monthly Premium Amount**
Less than or equal to $103,000	Less than or equal to $206,000	$0.00	$174.70
Greater than $103,000 and less than or equal to $129,000	Greater than $206,000 and less than or equal to $258,000	$69.90	$244.60
Greater than $129,000 and less than or equal to $161,000	Greater than $258,000 and less than or equal to $322,000	$174.70	$349.40
Greater than $161,000 and less than or equal to $193,000	Greater than $322,000 and less than or equal to $386,000	$279.50	$454.20
Greater than $193,000 and less than $500,000	Greater than $386,000 and less than $750,000	$384.30	$559.00
Greater than or equal to $500,000	Greater than or equal to $750,000	$419.30	$594.00

For beneficiaries with immunosuppressive drug only Part B coverage, who file either individual tax returns (and are single individuals, heads of households, qualifying widows or widowers with dependent children, or married individuals filing separately who lived apart from their spouses for the entire taxable year) or joint tax returns, the 2024 Part B monthly premium rates are announced and shown below.

Part B Immunosuppressive Drug Coverage Only			
Beneficiaries who file individual tax returns with modified adjusted gross income:	**Beneficiaries who file joint tax returns with modified adjusted gross income:**	**Income-Related Monthly Adjustment Amount**	**Total Monthly Premium Amount**
Less than or equal to $103,000	Less than or equal to $206,000	$0.00	$103.00
Greater than $103,000 and less than or equal to $129,000	Greater than $206,000 and less than or equal to $258,000	$68.70	$171.70
Greater than $129,000 and less than or equal to $161,000	Greater than $258,000 and less than or equal to $322,000	$171.70	$274.70
Greater than $161,000 and less than or equal to $193,000	Greater than $322,000 and less than or equal to $386,000	$274.70	$377.70
Greater than $193,000 and less than $500,000	Greater than $386,000 and less than $750,000	$377.70	$480.70
Greater than or equal to $500,000	Greater than or equal to $750,000	$412.10	$515.10

In addition, the monthly premium rates to be paid by (or on behalf of) beneficiaries with full Part B coverage who are married and lived with their spouses at any time during the taxable year, but who file separate tax returns from their spouses, are also announced and listed in the following table:

Full Part B Coverage		
Beneficiaries who are married and lived with their spouses at any time during the year, but who file separate tax returns from their spouses, with modified adjusted gross income:	**Income-Related Monthly Adjustment Amount**	**Total Monthly Premium Amount**
Less than or equal to $103,000	$0.00	$174.70
Greater than $103,000 and less than $397,000	$384.30	$559.00
Greater than or equal to $397,000	$419.30	$594.00

The monthly premium rates to be paid by (or on behalf of) beneficiaries with immunosuppressive drug only Part B coverage who are married and lived with their spouses at any time during the taxable year, but who file separate tax returns from their spouses, are announced and listed in the following table:

Part B Immunosuppressive Drug Coverage Only		
Beneficiaries who are married and lived with their spouses at any time during the year, but who file separate tax returns from their spouses, with modified adjusted gross income:	**Income-Related Monthly Adjustment Amount**	**Total Monthly Premium Amount**
Less than or equal to $103,000	$0.00	$103.00
Greater than $103,000 and less than $397,000	$377.70	$480.70
Greater than or equal to $397,000	$412.10	$515.10

D. Accounting Statement and Table

As required by OMB Circular A–4 (available at *www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf*), in Table 6 we have prepared an accounting statement showing the estimated aggregate Part B premium increase for all enrollees in 2024.

TABLE 6: ACCOUNTING STATEMENT: THE ESTIMATED AGGREGATE PART B PREMIUM INCREASE FOR ALL ENROLLEES FOR 2024

Estimated Aggregate Part B Premium Increase for All Enrollees for 2024	
Category	
Annualized Monetized Transfers	$7.3 billion
From Whom to Whom?	Beneficiaries to Federal Government

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E. Regulatory Flexibility Act (RFA)

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a rule or other regulatory document has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity. This notice announces the monthly actuarial rates for aged (age 65 and over) and disabled (under 65) beneficiaries enrolled in Part B of the Medicare SMI program beginning January 1, 2024. Also, this notice announces the monthly premium for aged and disabled beneficiaries as well as the income-related monthly adjustment amounts to be paid by beneficiaries with modified adjusted

gross income above certain threshold amounts. As a result, we are not preparing an analysis for the RFA because the Secretary has determined that this notice will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule or other regulatory document may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. As we discussed previously, we are not preparing an analysis for section 1102(b) of the Act because the Secretary has determined that this notice will not have a significant effect on a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of $100 million in 1995 dollars, updated annually for inflation. In 2023, that threshold is approximately $177 million. Part B enrollees who are also enrolled in Medicaid have their monthly Part B premiums paid by Medicaid. The cost to each State Medicaid program from the 2024 premium increase is estimated to be more than the threshold. This notice does not impose mandates that will have a consequential effect of the threshold amount or more on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule or other regulatory document (and subsequent final rule or other regulatory document) that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have determined that this notice does not significantly affect the rights, roles, and responsibilities of States. Accordingly, the requirements of Executive Order 13132 do not apply to this notice.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

V. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment prior to a rule taking effect in accordance with section 1871 of the Act and section 553(b) of the Administrative Procedure Act (APA). Section 1871(a)(2) of the Act provides that no rule, requirement, or other statement of policy (other than a national coverage determination) that establishes or changes a substantive legal standard governing the scope of benefits, the payment for services, or the eligibility of individuals, entities, or organizations to furnish or receive services or benefits under Medicare shall take effect unless it is promulgated through notice and comment rulemaking. Unless there is a statutory exception, section 1871(b)(1) of the Act generally requires the Secretary of the Department of Health and Human Services (the Secretary) to provide for notice of a proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment before establishing or changing a substantive legal standard regarding the matters enumerated by the statute. Similarly, under 5 U.S.C. 553(b) of the APA, the agency is required to publish a notice of proposed rulemaking in the **Federal Register** before a substantive rule takes effect. Section 553(d) of the APA and section 1871(e)(1)(B)(i) of the Act usually require a 30-day delay in effective date after issuance or publication of a rule, subject to exceptions. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the advance notice and comment requirement and the delay in effective date requirements. Sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act also provide exceptions from the notice and 60-day comment period and the 30-day delay in effective date. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act expressly authorize an agency to dispense with notice and comment rulemaking for good cause if the agency makes a finding that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest.

The annual updated amounts for the Part B monthly actuarial rates for aged and disabled beneficiaries, the Part B premium, and the Part B deductible set forth in this notice do not establish or change a substantive legal standard regarding the matters enumerated by the statute or constitute a substantive rule that would be subject to the notice requirements in section 553(b) of the APA. However, to the extent that an opportunity for public notice and comment could be construed as required for this notice, we find good cause to waive this requirement.

Section 1839 of the Act requires the Secretary to determine the monthly actuarial rates for aged and disabled beneficiaries, as well as the monthly Part B premium (including the income-related monthly adjustment amounts to be paid by beneficiaries with modified adjusted gross income above certain threshold amounts), for each calendar year in accordance with the statutory formulae, in September preceding the year to which they will apply. Further, the statute requires that the agency promulgate the Part B premium amount, in September preceding the year to which it will apply, and include a public statement setting forth the actuarial assumptions and bases employed by the Secretary in arriving at the amount of an adequate actuarial rate for enrollees age 65 and older. We include the Part B annual deductible, which is established in accordance with a specific formula described in section 1833(b) of the Act, because the determination of the amount is directly linked to the rate of increase in actuarial rate under section 1839(a)(1) of the Act. We have calculated the monthly actuarial rates for aged and disabled beneficiaries, the Part B deductible, and the monthly Part B premium as directed by the statute; since the statute establishes both when the monthly actuarial rates for aged and disabled beneficiaries and the monthly Part B premium must be published and the information that the Secretary must factor into those amounts, we do not have any discretion in that regard. We find notice and comment procedures to be unnecessary for this notice, and we find good cause to waive such procedures under section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act, if such procedures may be construed to be required at all. Through this notice, we are simply notifying the public of the updates to the monthly actuarial rates for aged and disabled beneficiaries and the Part B deductible, as well as the monthly Part B premium amounts and the income-related monthly adjustment amounts to be paid by certain beneficiaries, in accordance with the statute, for CY 2024. As such, we also note that even if notice and comment procedures were required for this notice, we would find good cause, for the previously stated reason, to waive the delay in effective date of the notice, as additional delay would be contrary to the public interest under section 1871(e)(1)(B)(ii) of the Act.

Publication of this notice is consistent with section 1839 of the Act, and we believe that any potential delay in the effective date of the notice, if such delay were required at all, could cause unnecessary confusion for both the agency and Medicare beneficiaries.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on October 11, 2023.

Dated: October 11, 2023.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2023–22823 Filed 10–12–23; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–576 and CMS–576A]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by *November 16, 2023.*

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Reinstatement with change of a previously approved collection; *Title of Information Collection:* Organ Procurement Organization (OPO) Request for Designation as an OPO, Health Insurance Benefits Agreement, and Supporting Regulations; *Use:* We are seeking reinstatement of a revised version of the CMS–576 form. We are also seeking reinstatement for the CMS–576A form. The CMS–576 and CMS–576A forms have been updated to a fillable .pdf format. In addition, multiple changes were made to the CMS–576 and CMS–576A forms.

Organizations seeking designation from CMS as a qualified and approved Organ Procurement Organization (OPO), as per §§ 371(a) and 1138 of the Social Security Act (''the Act'') must complete and submit the CMS–576 form. After designation as an OPO, the organization must sign CMS–576A form in order to be reimbursed by Medicare for their services. The CMS–576A form requires the OPO ''to maintain compliance with the requirements of titles XVIII and XIX of the Act, § 1138 of the Act, applicable regulations including the conditions set forth in Part 486, subpart G, title 42 of the Code of Federal Regulations, those conditions of the Organ Procurement and Transplantation Network established under § 372 of the Public Health Service Act that have been approved by the Secretary, and to report promptly to CMS. *Form Number:* CMS–576 and 576A (OMB Control Number: 0938–0512); *Frequency:* Occasionally; *Affected Public:* Private Sector (Business or other for-profit and Not-for-profit institutions); *Number of Respondents:* 16; *Total Annual Responses:* 16; *Total Annual Hours:* 32. (For policy questions regarding this collection contact Caroline Gallaher at 410–786–8705.)

Dated: October 12, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–22892 Filed 10–16–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8084–N]

RIN 0938–AV12

Medicare Program; CY 2024 Part A Premiums for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the monthly premium for uninsured enrollees under the Medicare Hospital Insurance (Part A) program in calendar year 2024. This premium is paid by enrollees aged 65 and over who are not otherwise eligible for benefits under Part A (hereafter known as the ''uninsured aged'') and by certain individuals with disabilities who have exhausted other entitlement. The monthly Part A premium for the 12 months beginning January 1, 2024 for

these individuals will be $505. The premium for certain other individuals as described in this notice will be $278.

DATES: The premium announced in this notice is effective on January 1, 2024.

FOR FURTHER INFORMATION CONTACT: Yaminee Thaker, (410) 786–7921.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1818 of the Social Security Act (the Act) provides for voluntary enrollment in the Medicare Hospital Insurance (Part A) program, subject to payment of a monthly premium, of certain persons aged 65 and older who are uninsured under the Old-Age, Survivors, and Disability Insurance (OASDI) program or the Railroad Retirement Act and do not otherwise meet the requirements for entitlement to Part A. These ''uninsured aged'' individuals are uninsured under the OASDI program or the Railroad Retirement Act because they do not have 40 quarters of coverage under Title II of the Act (or are/were not married to someone who did). (Persons insured under the OASDI program or the Railroad Retirement Act and certain others do not have to pay premiums for Part A.)

Section 1818A of the Act provides for voluntary enrollment in Medicare Part A, subject to payment of a monthly premium, for certain individuals with disabilities who have exhausted other entitlement. These are individuals who were entitled to coverage due to a disabling impairment under section 226(b) of the Act but who are no longer entitled to disability benefits and premium-free Part A coverage because they have gone back to work and their earnings exceed the statutorily defined ''substantial gainful activity'' amount (section 223(d)(4) of the Act).

Section 1818A(d)(2) of the Act specifies that the provisions relating to premiums for the aged, under section 1818(d) through section 1818(f), will also apply to certain individuals with disabilities, as described above.

Section 1818(d)(1) of the Act requires us to estimate, on an average per capita basis, the amount to be paid from the Federal Hospital Insurance Trust Fund for services incurred in the upcoming calendar year (CY) (including the associated administrative costs) on behalf of individuals aged 65 and over who will be entitled to benefits under Part A. We must then determine the monthly actuarial rate for the following year (the per capita amount estimated above divided by 12) and publish the dollar amount for the monthly premium in the succeeding CY. If the premium is not a multiple of $1, it is rounded to the nearest multiple of $1 (or, if it is a multiple of 50 cents but not of $1, it is rounded to the next highest $1).

Section 13508 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66) amended section 1818(d) of the Act to provide for a reduction in the premium amount for certain voluntary enrollees (sections 1818 and 1818A). The reduction applies to an individual who is eligible to buy into the Part A program and who, as of the last day of the previous month:

- Had at least 30 quarters of coverage under Title II of the Act;
- Was married, and had been married for the previous 1-year period, to a person who had at least 30 quarters of coverage;
- Had been married to a person for at least 1 year at the time of the person's death if, at the time of death, the person had at least 30 quarters of coverage; or
- Is divorced from a person who at the time of divorce had at least 30 quarters of coverage if the marriage lasted at least 10 years.

Section 1818(d)(4)(A) of the Act specifies that the premium that these individuals will pay for CY 2024 will be equal to the premium for uninsured aged enrollees reduced by 45 percent.

Section 1818(g) of the Act requires the Secretary of Health and Human Services (the Secretary), at the request of a state, to enter into a Medicare Part A buy-in agreement with the state to pay Part A premiums for Qualified Medicare Beneficiaries (QMBs).[1] Under the QMB eligibility group, state Medicaid agencies must pay the Part A premium for those not eligible for premium-free Part A, if those individuals meet all of the eligibility requirements for the QMB eligibility group under the state's Medicaid state plan. (Entering into a Part A buy-in agreement would permit states to avoid any Part A late enrollment penalties that individuals may owe and would allow states to enroll persons in Part A at any time of the year, without regard to Medicare enrollment periods.) Other individuals may be eligible for the Qualified Disabled and Working Individuals (QDWIs) eligibility group, through which state Medicaid programs provide coverage for the Part A premiums for individuals who are eligible to enroll in Part A by virtue of section 1818A of the Act and meet certain financial eligibility criteria.

[1] Effective on January 1, 2023, the regulatory definition of qualified Medicare beneficiaries at 42 CFR 435.123 has been expanded to include additional individuals. These individuals are only entitled to limited Medicare coverage under Part B for immunosuppressive drugs. Because the new individuals are not entitled to Part A, the expansion of the QMB definition does not change the analysis in this notice.

II. Monthly Premium Amount for CY 2024

The monthly premium for the uninsured aged and certain individuals with disabilities who have exhausted other entitlement, for the 12 months beginning January 1, 2024, is $505. The monthly premium for the individuals who are eligible under section 1818(d)(4)(B) of the Act, and who are therefore subject to the 45-percent reduction in the monthly premium, is $278.

III. Monthly Premium Rate Calculation

As discussed in section I of this notice, the monthly Medicare Part A premium is equal to the estimated monthly actuarial rate for CY 2024 rounded to the nearest multiple of $1 and equals one-twelfth of the average per capita amount, which is determined by projecting the number of Part A enrollees aged 65 years and over, as well as the benefits and administrative costs that will be incurred on their behalf.

The steps involved in projecting these future costs to the Federal Hospital Insurance Trust Fund are as follows:

- Establishing the present cost of services furnished to beneficiaries, by type of service, to serve as a projection base;
- Projecting increases in payment amounts for each of the service types; and
- Projecting increases in administrative costs.

We base our projections for CY 2024 on (1) current historical data and (2) projection assumptions derived from current law and the President's Fiscal Year 2024 Budget.

For CY 2024, we estimate that 59,121,430 people aged 65 years and over will be entitled to (enrolled in) benefits (without premium payment) and that they will incur about $358,251 billion in benefits and related administrative costs. Thus, the estimated monthly average per capita amount is $504.97, and the monthly premium is $505. Subsequently, the full monthly premium reduced by 45 percent is $278.

IV. Costs to Beneficiaries

The CY 2024 premium of $505 is approximately 0.2 percent lower than the CY 2023 premium of $506. We estimate that approximately 729,000 enrollees will voluntarily enroll in Medicare Part A by paying the full premium and that over 90 percent of these individuals will have their Part A

premium paid for by states, since they are entitled to Part A and enrolled in the QMB program eligibility group. Furthermore, the CY 2024 reduced premium is the same as for CY 2023, at $278, and we estimate that an additional 94,000 enrollees will pay this premium. Therefore, for enrollees paying these premiums in CY 2024, we estimate that the total aggregate savings, compared with the amount that they paid in CY 2023, will be about $9 million.

V. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment prior to a rule taking effect in accordance with section 1871 of the Act and section 553(b) of the Administrative Procedure Act (APA). Section 1871(a)(2) of the Act provides that no rule, requirement, or other statement of policy (other than a national coverage determination) that establishes or changes a substantive legal standard governing the scope of benefits, the payment for services, or the eligibility of individuals, entities, or organizations to furnish or receive services or benefits under Medicare shall take effect unless it is promulgated through notice and comment rulemaking. Unless there is a statutory exception, section 1871(b)(1) of the Act generally requires the Secretary to provide for notice of a proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment before establishing or changing a substantive legal standard regarding the matters enumerated by the statute. Similarly, under 5 U.S.C. 553(b) of the APA, the agency is required to publish a notice of proposed rulemaking in the **Federal Register** before a substantive rule takes effect. Section 553(d) of the APA and section 1871(e)(1)(B)(i) of the Act usually require a 30-day delay in effective date after issuance or publication of a rule, subject to exceptions. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the advance notice and comment requirement and the delay in effective date requirements. Sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act also provide exceptions from the notice and 60-day comment period and the 30-day delay in effective date. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act expressly authorize an agency to dispense with notice and comment rulemaking for good cause if the agency makes a finding that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest.

The annual Medicare Part A premium announcement set forth in this notice does not establish or change a substantive legal standard regarding the matters enumerated by the statute or constitute a substantive rule that would be subject to the notice requirements in section 553(b) of the APA. However, to the extent that an opportunity for public notice and comment could be construed as required for this notice, we find good cause to waive this requirement.

Section 1818(d) of the Act requires the Secretary, during September of each year, to determine and publish the amount to be paid, on an average per capita basis, from the Federal Hospital Insurance Trust Fund for services incurred in the impending CY (including the associated administrative costs) on behalf of individuals aged 65 and over who will be entitled to benefits under Part A. Further, the statute requires that the agency determine the applicable premium amount for each CY in accordance with the statutory formula. In this notice, we are simply notifying the public of the changes to the Part A premiums for CY 2024. We have calculated the Part A premiums as directed by the statute, which establishes both when the premium amounts must be published and what information must be factored by the Secretary into these amounts; we do not have any discretion in that regard. We find notice and comment procedures to be unnecessary for this notice, and we find good cause to waive such procedures under section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act, if such procedures may be construed to be required at all. Through this notice, we are simply notifying the public of the updates to the Part A premiums, in accordance with the statute, for CY 2024. As such, we also note that even if notice and comment procedures were required for this notice, for the reasons stated above we would find good cause to waive the delay in effective date of the notice, as additional delay would be contrary to the public interest under section 1871(e)(1)(B)(ii) of the Act. Publication of this notice is consistent with section 1818(d) of the Act, and we believe that any potential delay in the effective date of the notice, if such delay were required at all, could cause unnecessary confusion for both the agency and Medicare beneficiaries.

VI. 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.*).

VII. Regulatory Impact Analysis

Although this notice does not constitute a substantive rule, we nevertheless prepared this Regulatory Impact Analysis section in the interest of ensuring that the impacts of this notice are fully understood.

A. Statement of Need

This notice announces the CY 2024 Medicare Part A premiums for the uninsured aged and for certain disabled individuals who have exhausted other entitlement, as required by sections 1818 and 1818A of the Act. It also responds to section 1818(d) of the Act, which requires the Secretary to provide for publication of these amounts in the **Federal Register** during the September that precedes the start of each CY. As this statutory provision prescribes a detailed methodology for calculating these amounts, we do not have the discretion to adopt an alternative approach on these issues.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993); Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011); Executive Order 14094 entitled ''Modernizing Regulatory Review'' (April 6, 2023); the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354); section 1102(b) of the Social Security Act; section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4); Executive Order 13132 on Federalism (August 4, 1999); and the Congressional Review Act (5 U.S.C. 804(2)).

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 14094, ''Modernizing Regulatory Review,'' amends section 3(f)(1) of Executive Order 12866 (Regulatory Planning and Review). The amended section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $200 million or more in any

1 year (adjusted every 3 years by the Administrator of the Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product) or adversely affecting in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities; (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising legal or policy issues, for which centralized review would meaningfully further the President's priorities or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

A regulatory impact analysis (RIA) must be prepared for major rules with significant regulatory action/s and/or with significant effects as per section 3(f)(1) of Executive Order 12866 ($200 million or more in any 1 year). Based on our estimates, OMB's Office of Information and Regulatory Affairs has determined that this rulemaking is not significant and not major under Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act).

As stated in section IV of this notice, we estimate that the overall effect of the changes in the Medicare Part A premium will be a savings to voluntary enrollees (sections 1818 and 1818A of the Act) of about $9 million.

C. Accounting Statement and Table

As required by OMB Circular A–4 (available at *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf*), in the Table below we have prepared an accounting statement showing the total aggregate savings to enrollees paying premiums in CY 2024, compared with the amount that they paid in CY 2023. The amount of savings will be about $9 million. As stated in section IV of this notice, the CY 2024 premium of $505 is approximately 0.2 percent lower than the CY 2023 premium of $506. We estimate that approximately 729,000 enrollees will voluntarily enroll in Medicare Part A by paying the full premium and that over 90 percent of these individuals will have their Part A premium paid for by states, since they are enrolled in the QMB eligibility group. Furthermore, the CY 2024 reduced premium of $278 is the same as for CY 2023.

TABLE—ESTIMATED TRANSFERS FOR CY 2024 MEDICARE PART A PREMIUMS

Category	Transfers
Annualized Monetized Transfers.	−$9 million.
From Whom to Whom	Beneficiaries to Federal Government.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies to analyze options for regulatory relief of small entities if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by being nonprofit organizations or by meeting the Small Business Administration's definition of a small business (having revenues of less than $9.0 million to $47 million in any 1 year). Individuals and states are not included in the definition of a small entity. This annual notice announces the Medicare Part A premiums for CY 2024 and will have an impact on certain Medicare beneficiaries. As a result, we are not preparing an analysis for the RFA because the Secretary has certified that this notice will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This annual notice announces the Medicare Part A premiums for CY 2024 and will have an impact on certain Medicare beneficiaries. As a result, we are not preparing an analysis for section 1102(b) of the Act because the Secretary has certified that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

E. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2023, that threshold is approximately $177 million. This notice would not impose a mandate that will result in expenditures by state, local, and Tribal Governments, in the aggregate, or by the private sector, of more than $177 million in any 1 year.

F. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. This notice will not have a substantial direct effect on state or local governments, preempt state law, or otherwise have Federalism implications.

G. Congressional Review

This final regulation is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to the Congress and the Comptroller General for review.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on October 11, 2023.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2023–22848 Filed 10–12–23; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10450, CMS–10383, and CMS–10466]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register**

concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by December 18, 2023.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10450 Consumer Assessment of Healthcare Providers and Systems (CAHPS) Survey for Merit-based Incentive Payment Systems (MIPS)

CMS–10383 Review and Approval Process for Waivers for State Innovation

CMS–10466 Patient Protection and Affordable Care Act; Exchange Functions: Eligibility for Exemptions

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved Information Collection; *Title of Information Collection:* Consumer Assessment of Healthcare Providers and Systems (CAHPS) Survey for Merit-based Incentive Payment Systems (MIPS); *Use:* The CAHPS for MIPS survey is used in the Quality Payment Program (QPP) to collect data on fee-for-service Medicare beneficiaries' experiences of care with eligible clinicians participating in MIPS and is designed to gather only the necessary data that CMS needs for assessing physician quality performance, and related public reporting on physician performance, and should complement other data collection efforts. The survey consists of the core Agency for Healthcare Research and Quality (AHRQ) CAHPS Clinician & Group Survey, version 3.0, plus additional survey questions to meet CMS's information and program needs. The survey information is used for quality reporting, the compare tool on the *Medicare.gov* website, and annual statistical experience reports describing MIPS data for all MIPS eligible clinicians.

This 2024 information collection request addresses the requirements related to the statutorily required quality measurement. The CAHPS for MIPS survey results in burden to three different types of entities: groups, virtual groups, and subgroups; vendors; and beneficiaries associated with administering the survey. Virtual groups are subject to the same requirements as groups and subgroups; therefore, we will refer only to ''groups'' as an inclusive term for all entities unless otherwise noted. *Form Number:* CMS–10450 (OMB control number: 0938–1222); Frequency: Yearly; *Affected Public:* Business or other for-profits and Not-for-profit institutions and Individuals and Households; *Number of Respondents:* 25,536; *Total Annual Responses:* 25,536; *Total Annual Hours:* 5,867 (For policy questions regarding this collection contact Renee Oneill at 410–786–8821.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Review and Approval Process for Waivers for State Innovation; *Use:* The information required under this collection is necessary to ensure that states comply with statutory and regulatory requirements related to the development and implementation of section 1332 waivers. States seeking waiver authority under section 1332 of the ACA are required to meet certain requirements for applications, public notice, and reporting. The authority for these requirements is found in section 1332 of the ACA. This information collection reflects the requirements provided in the final rules published in February 2012 (77 FR 11700) and September 2021 (86 FR 3412).

On October 24, 2018, the Departments published guidance (86 FR 53575) that provided supplementary information about the requirements that must be met for the approval of a section 1332 waiver, the Secretaries' application review procedures, the calculation of pass-through funding, certain analytical requirements, and operational considerations. However, the September 2021 final rule superseded and rescinded policies and interpretations outlined in the 2018 guidance and repealed the previous codification of the interpretations of the statutory guardrails in part 1 of the 2022 Payment Notice final rule (86 FR 6138). The September 2021 final rule (86 FR 53412) finalized modifications to section 1332 waiver implementing regulations, including changes to many of the policies and interpretations of the statutory guardrails codified in regulation. In addition, the September 2021 final rule modified regulations to provide flexibilities in the public notice requirements and post-award public participation requirements for section 1332 waivers under certain future

emergent situations. The final rule also provided new information regarding the processes and procedures for amendments and extensions for approved waiver plans. *Form Number:* CMS–10383 (OMB Control Number 0938–1389; *Frequency:* Occasionally; *Affected Public:* State Governments; *Number of Respondents:* 19; *Total Annual Responses:* 399; *Total Annual Hours:* 5,549. (For policy questions regarding this collection contact Lina Rashid at 301–492–4193.)

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Patient Protection and Affordable Care Act; Exchange Functions: Eligibility for Exemptions; *Use:* The data collection and reporting requirements in ''Patient Protection and Affordable Care Act; Exchange Functions: Eligibility for Exemptions; Miscellaneous Minimum Essential Coverage Provisions'' (78 FR 39494 (July 1, 2013)), address federal requirements that states must meet with regard to the Exchange minimum function of performing eligibility determinations and issuing certificates of exemption from the shared responsibility payment. In the final regulation, CMS addresses standards related to eligibility, including the verification and eligibility determination process, eligibility redeterminations, options for states to rely on HHS to make eligibility determinations for certificates of exemption, and reporting. CMS developed four appendices of application materials to illustrate the process applicants use to apply for exemptions from the shared responsibility payment. This information collection requests seeks approval for the requirements associated with the collection of information associated with these four appendices. *Form Number:* CMS–10466 (OMB Control Number 0938–1190; *Frequency:* Annually; *Affected Public:* Individuals and Households—State, Local, or Tribal Governments; *Number of Respondents:* 849; *Total Annual Responses:* 849; *Total Annual Hours:* 1,962. (For policy questions regarding this collection contact John Kenna at 301–492–4452.)

Dated: October 12, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–22897 Filed 10–16–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for Office of Management and Budget Review; Federal Case Registry (Office of Management and Budget #0970–0421)

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, United States Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), is requesting from the Office of Management and Budget (OMB) to extend approval of the Federal Case Registry (FCR) for an additional three years. The current approval expires November 30, 2023. OCSE is proposing minor changes to punctuation, formatting, grammar, clarity, and spacing to enable easier completion of the form.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The FCR is a national database of information pertaining to child support cases processed by state child support agencies, referred to as ''IV–D'' cases, and non-IV–D support orders privately established or modified by courts or tribunals on or after October 1, 1998. FCR information is comprised of child support orders and case information from each State Case Registry (SCR). The FCR automatically compares new SCR submissions to existing FCR information and to wage and employment information in the National Directory of New Hires. The Federal Parent Locator Service notifies state agencies if a IV–D case participant in the state matches a participant in a IV–D or non-IV–D case in another state and supplies any matched wage and employment information. Matches enable state agencies to locate parties that live in different states to establish, modify, or enforce child support obligations; to establish paternity; to enforce state law regarding parental kidnapping; and to establish or enforce child custody or visitation determinations.

The FCR instrument, Appendix G: Input Record Layout, contains minor changes in punctuation, formatting, grammar, clarity, and spacing to enable easier completion of the form.

Respondents: State child support enforcement agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Appendix G: Input Transactions Layout	54	406	0.033	730

Estimated Total Annual Burden Hours: 730.

Authority: 42 U.S.C. 653(h); 42 U.S.C. 654a(e); 42 U.S.C. 654a(f)(1).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–22809 Filed 10–16–23; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–2016]

Policy for Testing of Alcohol (Ethanol) and Isopropyl Alcohol for Methanol; 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 ''Policy for Testing of Alcohol (Ethanol) and Isopropyl Alcohol for Methanol.'' This guidance is intended to alert pharmaceutical manufacturers and pharmacists in State-licensed pharmacies or Federal facilities who engage in drug compounding to the potential public health hazard of alcohol (ethyl alcohol or ethanol) or isopropyl alcohol contaminated with or substituted with methanol. During the Coronavirus Disease 2019 (COVID–19) public health emergency (PHE), FDA became aware of reports of fatal methanol poisoning of consumers who ingested alcohol-based hand sanitizer products that were manufactured with methanol or methanol-contaminated ethanol. FDA is concerned that other drug products containing ethanol or isopropyl alcohol (pharmaceutical alcohol), which are widely used active ingredients in a variety of drug products, could be similarly vulnerable to methanol contamination. This guidance replaces the guidance for industry entitled ''Policy for Testing Alcohol (Ethanol) and Isopropyl Alcohol for Methanol, Including During the Public Health Emergency (COVID–19)'' published in January 2021.

DATES: The announcement of the guidance is published in the **Federal Register** on October 17, 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–2020–D–2016 for ''Policy for Testing of Alcohol (Ethanol) and Isopropyl Alcohol for Methanol.'' 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 the 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 to 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; or to Policy and Regulations Staff, HFV–6, Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855. 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: Francis Godwin, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 4342, Silver Spring, MD 20993–0002, 301–796–5362; 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; or Julie Bailey, Center for Veterinary Medicine (HFV–140), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0700.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance for industry entitled ''Policy for Testing of Alcohol (Ethanol) and Isopropyl Alcohol for Methanol.'' This guidance is intended to alert pharmaceutical manufacturers and pharmacists in State-licensed pharmacies or Federal facilities who engage in compounding to the potential public health hazard of alcohol (ethyl alcohol or ethanol) or isopropyl alcohol (collectively ''pharmaceutical alcohol'') contaminated with or substituted with methanol. During the COVID–19 PHE, FDA became aware of reports of fatal methanol poisoning of consumers who ingested alcohol-based hand sanitizer products that were manufactured with methanol or methanol-contaminated ethanol. FDA is concerned that other drug products containing pharmaceutical alcohol, which are widely used active ingredients in a variety of drug products, could be similarly vulnerable to methanol contamination.

This guidance outlines a policy intended to help pharmaceutical manufacturers and pharmacists in State-licensed pharmacies or Federal facilities who engage in compounding avoid the use of pharmaceutical alcohol that is contaminated with or substituted with methanol in drug products. The policy outlined in the guidance includes, but is not limited to: (1) performing a specific identity test that includes a limit test for methanol on each container within each shipment of each lot of pharmaceutical alcohol before the component is used in the manufacture or preparation of drug products; (2) knowing the entities in pharmaceutical manufacturers' supply chain for pharmaceutical alcohol (*i.e.,* knowing the identities and appropriately qualifying the manufacturer of the pharmaceutical alcohol and any subsequent distributor(s)); (3) ensuring that all personnel in pharmaceutical manufacturing facilities (especially personnel directly responsible for receipt, testing, and release of pharmaceutical alcohol) are made aware of the importance of proper testing and the potential hazards if the testing is not done; and (4) establishing finished-product test methods to ensure that when testing for ethanol or isopropyl alcohol content (assay), the method also distinguishes between the active ingredient and methanol. The policy outlined in this guidance applies to pharmaceutical alcohols used as an active or inactive ingredient in a drug.

This guidance replaces the guidance entitled ''Policy for Testing Alcohol (Ethanol) and Isopropyl Alcohol for Methanol, Including During the Public Health Emergency (COVID–19)'' posted in January 2021 and announced in the **Federal Register** on February 23, 2021 (86 FR 10977) (hereafter ''2021 COVID–19 Methanol Guidance''). FDA issued the guidance to communicate its policy for the duration of the COVID–19 PHE declared by the Secretary of Health and Human Services (HHS) on January 31, 2020, including any renewals made by the HHS Secretary in accordance with section 319(a)(2) of the Public Health Service Act (42 U.S.C. 247d(a)(2)). As stated in the 2021 guidance, at such time when the PHE was over, as declared by the HHS Secretary, FDA intended to reassess the guidance. Furthermore, in the **Federal Register** of March 13, 2023 (88 FR 15417), FDA listed the guidance documents that will no longer be effective with the expiration of the PHE declaration, guidances that FDA was revising to continue in effect for 180 days after the expiration of the PHE declaration to provide a period for stakeholder transition and then would no longer be in effect, and guidances that FDA was revising to continue in effect for 180 days after the expiration of the PHE declaration during which time FDA planned to further revise the guidances. The 2021 COVID–19 Methanol Guidance is included in the latter category. Although the COVID–19 PHE ended May 11, 2023, FDA has determined that the recommendations set forth in the 2021 COVID–19 Methanol Guidance are applicable outside the context of the COVID–19 PHE. FDA is, therefore, issuing this revised final guidance, which will supersede the current guidance. In preparing this guidance, FDA considered comments received regarding the 2021 guidance, as well as the Agency's experience with this matter during the PHE. Updates to this guidance include removal of certain language regarding the COVID–19 PHE, as well as removal of language related to the three hand sanitizer guidance documents that have since been withdrawn.

This guidance is being issued consistent with FDA's good guidance practices regulation (§ 10.115 (21 CFR 10.115)) without initially seeking prior comment because the Agency has determined that prior public participation is not feasible or appropriate (see § 10.115(g)(2) and section 701(h)(1)(C)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(h)(1)(C)(i))). Specifically, we are not seeking prior comment because, although the COVID–19 PHE has ended, the use of hand sanitizers and other drug products containing pharmaceutical alcohol remains widespread. Given the serious risks to public health, including blindness and death, that can result from methanol contamination, it is thus important to public health to continue to apply the policy described in the guidance, which encourages stringent and continued oversight of such products for the possible presence of methanol.

The guidance represents the current thinking of FDA on ''Policy for Testing of Alcohol (Ethanol) and Isopropyl Alcohol for Methanol.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001; the collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014; the collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338; and the collections of information in 21 CFR parts 210 and 211 have been approved under OMB control number 0910–0139.

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*, *https://www.fda.gov/regulatory-information/search-fda-guidance-documents*, or *https://www.regulations.gov*.

Dated: October 11, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–22843 Filed 10–16–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–P–3682]

Determination That ZOFRAN ODT (Ondansetron) Orally Disintegrating Tablets, 4 Milligrams and 8 Milligrams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined that ZOFRAN ODT (ondansetron) orally disintegrating tablets, 4 milligrams (mg) and 8 mg, were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to these drug products, and it will allow FDA to continue to approve ANDAs that refer to the products as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Veniqua Stewart, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6219, Silver Spring, MD 20993–0002, 301–796–3267, *Veniqua.stewart@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a version of the drug that was previously approved, and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

ZOFRAN ODT (ondansetron) orally disintegrating tablets, 4 mg and 8 mg, are the subject of NDA 020781, held by Sandoz Inc., and initially approved on January 27, 1999. ZOFRAN ODT is indicated for the prevention of nausea and vomiting associated with: highly emetogenic cancer chemotherapy, including cisplatin greater than or equal to 50 mg/m^2; initial and repeat courses of moderately emetogenic cancer chemotherapy; and radiotherapy in patients receiving either total body irradiation, single high-dose fraction to the abdomen, or daily fractions to the abdomen. ZOFRAN ODT is also indicated for the prevention of postoperative nausea and/or vomiting.

ZOFRAN ODT (ondansetron) orally disintegrating tablets, 4 mg and 8 mg, are currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

Sun Pharmaceutical Industries Limited submitted a citizen petition dated August 24, 2023 (Docket No. FDA–2023–P–3682), under 21 CFR 10.30, requesting that the Agency determine whether ZOFRAN ODT (ondansetron) orally disintegrating tablets, 4 mg and 8 mg, were withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that ZOFRAN ODT (ondansetron) orally disintegrating tablets, 4 mg and 8 mg, were not withdrawn from sale for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that ZOFRAN ODT (ondansetron) orally disintegrating tablets, 4 mg and 8 mg, were withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of ZOFRAN ODT (ondansetron) orally disintegrating tablets, 4 mg and 8 mg, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have reviewed the available evidence and determined that these drug products were not withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list ZOFRAN ODT (ondansetron) orally disintegrating tablets, 4 mg and 8 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. FDA will not begin procedures to withdraw approval of approved ANDAs that refer to these drug products. Additional ANDAs for these drug products may also be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: October 10, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–22844 Filed 10–16–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–D–4067]

Diabetic Foot Infections: Developing Drugs for Treatment; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Diabetic Foot Infections: Developing Drugs for Treatment.'' The purpose of this draft guidance is to assist sponsors in the

clinical development of drugs for the treatment of diabetic foot infections (DFI) without concomitant bone and joint involvement.

DATES: Submit either electronic or written comments on the draft guidance by December 18, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked, and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–D–4067 for ''Diabetic Foot Infections: Developing Drugs for Treatment.'' 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 the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Mayurika Ghosh, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6219, Silver Spring, MD 20993, 301–796–4776.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Diabetic Foot Infections: Developing Drugs for Treatment.''

The purpose of this draft guidance is to assist sponsors in the clinical development of drugs for the treatment of DFI without concomitant bone and joint involvement. Specifically, this guidance addresses FDA's current thinking regarding the overall development program and clinical trial designs for the development of drugs to support an indication for treatment of DFI.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Diabetic Foot Infections: Developing Drugs for Treatment.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014. The collections of information in 21 CFR 201.56 and 201.57 relating to prescription product labeling requirements have been approved under OMB control number 0910–0572.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents*, or *https://www.regulations.gov*.

Dated: October 11, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–22842 Filed 10–16–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Rural Health and Economic Development Analysis Program

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Announcing funding supplement for Rural Health and Economic Development Analysis Program.

SUMMARY: HRSA provided additional award funds to the Rural Health and Economic Development Analysis Program recipient to produce a research project that quantifies the relationships between health care and economic factors in rural communities.

FOR FURTHER INFORMATION CONTACT: Karis Tyner, Federal Office of Rural Health Policy, HRSA, at *ktyner@hrsa.gov* and (240) 645–5756.

SUPPLEMENTARY INFORMATION:

TABLE 1—RECIPIENT AND AWARD AMOUNT

Grant No.	Award recipient name	City, state	Supplemental award amount
5 U1ZRH33331	The University of Kentucky	Lexington, KY	$250,000

Intended Recipient of the Award: The University of Kentucky.

Amount of Non-Competitive Award: One award for $250,000.

Project Period: September 1, 2023, to August 31, 2024.

CFDA Number: 93.155.

Award Instrument: Supplement.

Authority: Social Security Act section 711(b) (42 U.S.C. 912(b)).

Justification: This funding will provide a one-time supplement to the University of Kentucky via the Rural Health and Economic Development Analysis Program with a budget period of September 2023 through August 2024. This supplement will allow the University of Kentucky to build on past and ongoing projects supported by HRSA to improve health care in rural areas by advancing the knowledge base regarding the economic impacts of local health care sectors on rural economies.

Carole Johnson,

Administrator.

[FR Doc. 2023–22814 Filed 10–16–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Solicitation of Written Comments on Healthy People 2030 Objectives

AGENCY: Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary of Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The U.S. Department of Health and Human Services (HHS) solicits written comments from the public on the current Healthy People 2030 objectives, and written comments from the public proposing additional new core, developmental, or research objectives or topics to be included in Healthy People 2030. Public comment informed the development of Healthy People 2030. HHS will provide opportunities for public input periodically throughout the decade to ensure Healthy People 2030 reflects current public health priorities and public input. The updated set of Healthy People 2030 objectives and topics will be incorporated on *https://health.gov/healthypeople.* This updated set will reflect further review and deliberation by Federal Healthy People topic area workgroups, the Federal Interagency Workgroup on Healthy People 2030, and other Federal subject matter experts.

DATES: Written comments will be accepted through 11:59 p.m. ET, November 20, 2023.

ADDRESSES: Written comments should be submitted by email to *HP2030Comment@hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Erik Orta, Office of Disease Prevention and Health Promotion, U.S. Department of Health and Human Services, 1101 Wootton Parkway, Suite 420, Rockville, MD 20852; Phone: 240–268–0823; Email: *HP2030@hhs.gov.*

SUPPLEMENTARY INFORMATION: Since 1980, Healthy People has provided a comprehensive set of national health promotion and disease prevention objectives with 10-year targets aimed at improving the health of all. Healthy People 2030 objectives present a picture of the nation's health at the beginning of the decade, establish national goals and targets to be achieved by the year 2030, and monitor progress over time. The U.S. Department of Health and Human Services (HHS) is soliciting the submission of written comments regarding the current Healthy People 2030 objectives. The public is also invited to submit proposals for additional new core, developmental, or research objectives that meet the criteria outlined below.

Healthy People 2030 is the product of an extensive collaborative process that relies on input from a diverse array of individuals and organizations, both within and outside the Federal Government, with a common interest in improving the nation's health. Public comments were a cornerstone of Healthy People 2030's development. During the first phase of planning for Healthy People 2030, HHS asked for the public's comments on the initiative's vision, mission, and overarching goals. Those comments helped set the framework for Healthy People 2030. The public was also invited to submit comments on proposed Healthy People 2030 objectives, which helped shape the current set of Healthy People 2030 objectives. HHS most recently solicited comments on one new objective during the 2022 public comment period from October 24, 2022, through December 2, 2022, and three new proposed objectives during the 2021 public comment period from December 3, 2021, through January 10, 2022. These new objectives, which were developed by Healthy People 2030 subject matter experts, meet specific criteria, and reflect public input, are now accessible on *https://health.gov/healthypeople.*

While there are no new objectives being proposed at this time, the public

is invited to provide comment on the current Healthy People 2030 objectives and propose additional core, developmental, or research objectives for consideration that address critical public health issues. Proposed new objectives must meet all the objective selection criteria (see below). The public is also invited to propose new topics to be considered for inclusion in Healthy People 2030.

Objective Selection Criteria

Core Objectives

Core objectives must meet the following five criteria to be included in Healthy People 2030. Core objectives should (1) have a reliable, nationally representative data source with baseline data no older than 2015; (2) have at least two additional data points beyond the baseline during the decade; (3) be of national importance; (4) have effective, evidence-based interventions available to achieve the objective; and (5) have data to help address disparities and achieve health equity.

Developmental Objectives

Developmental objectives will have the following characteristics: (1) represent high priority issues; (2) do not have reliable baseline data yet; and (3) have evidence-based interventions available.

Research Objectives

Research objectives will have the following characteristics: (1) represent key opportunities to make progress in areas with limited prior research, a high health or economic burden, or significant disparities between population groups; (2) may or may not have reliable baseline data; and (3) do not have evidence-based interventions available.

Written comments and evidence-based information should be submitted by email to *HP2030Comment@hhs.gov* by 11:59 p.m. ET on November 20, 2023. Comments received in response to this notice will be reviewed and considered by the Healthy People topic area workgroups, Federal Interagency Workgroup on Healthy People 2030, and other Federal subject matter experts.

Paul Reed,

Deputy Assistant Secretary for Health, Office of Disease Prevention and Health Promotion.

[FR Doc. 2023–22805 Filed 10–16–23; 8:45 am]

BILLING CODE 4150–32–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: Speech, Language, and Motor Function.

Date: November 8, 2023.

Time: 10:30 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: Sara Louise Hargrave, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, Bethesda, MD 20892, (301) 443–7193, *hargravesl@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: The Cancer Biotherapeutics Development (CBD).

Date: November 13–14, 2023.

Time: 8:00 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: Laurie Ann Shuman Moss, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 867–5309, *laurie.shumanmoss@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Musculoskeletal, Orthopedic, Oral, Dermatology and Rheumatology.

Date: November 15–16, 2023.

Time: 8:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aftab A. Ansari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301) 237–9931, *ansaria@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–22–180: Maximizing Investigators' Research Award (MIRA) (R35-Clinical Trial Optional).

Date: November 15–16, 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: Heidi B. Friedman, Ph.D., Senior Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 907–H, Bethesda, MD 20892, (301) 379–5632, *hfriedman@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Arthritis, Connective Tissue and Skin.

Date: November 15, 2023.

Time: 11:00 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: Richard Michael Lovering, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000J, Bethesda, MD 20892, (301) 867–5309, *loveringrm@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cell and Developmental Biology of Eye.

Date: November 15, 2023.

Time: 2:00 p.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: Rass M. Shayiq, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: The Cancer Drug Development and Therapeutics (CDDT).

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: Lilia Topol, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, 301–451–0131, *ltopol@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Instrumentation, Environmental, and Occupational Safety.

Date: November 16–17, 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: Joonil Seog, SCD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–402–9791, *joonil.seog@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Computational, Modeling, and Biodata Management.
Date: November 16, 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: Marie-Jose Belanger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm 6188, MSC 7804, Bethesda, MD 20892, 301–435–1267, *belangerm@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: October 12, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–22859 Filed 10–16–23; 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 grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; Botulinum Toxin Potency Assay using Tissue Chips.
Date: November 20, 2023.
Time: 1:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Center for Advancing Translational Sciences, National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Rahat (Rani) Khan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1078, Bethesda, MD 20892, 301–594–7319, *khanr2@csr.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: October 12, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–22858 Filed 10–16–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental 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 Institute of Mental Health Special Emphasis Panel; BRAIN Initiative: Centers for Engineering Molecular Technologies for Functional Dissection of Neural Circuits (UM1).
Date: November 17, 2023.
Time: 10:00 a.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).
Contact Person: Jasenka Borzan, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Neuroscience Center, Bethesda, MD 20892, 301–435–1260, *jasenka.borzan@nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: October 11, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–22804 Filed 10–16–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention's (CSAP) Drug Testing Advisory Board (DTAB) will convene via web conference on December 5, 2023, from 10 a.m. EST to 4:30 p.m.

The board will meet in open-session December 5, 2023, from 10 a.m. EST to 4:30 p.m. EST to hear Federal Partner updates and presentations regarding NLCP activities, updates to the MRO manuals, lab created cannabinoids and other contaminants in commercially available products and the process for adding or removing analytes from the analyte table for federally regulated testing. The board will discuss the Mandatory Guidelines for Federal Workplace Drug Testing Programs and updates to the analyte table to include Fentanyl. Additionally the Department is asking for public comments on the recommendation of adding fentanyl/nor-fentanyl to the analyte table.

Section 8105 of the Fighting Opioid Abuse in Transportation Act, included in the SUPPORT for Patients and Communities Act, required the Secretary to determine whether it is justified, based on the reliability and cost-effectiveness of testing, to revise the Mandatory Guidelines for Federal Workplace Drug Testing Programs to include fentanyl. Section 8105 additionally required the Secretary to consider whether to include any other drugs or other substances listed in Schedule I and II of Controlled Substances Act (CSA). Norfentanyl is a metabolite of fentanyl. Because it is also an immediate precursor used in the illicit manufacture of fentanyl, it is a Schedule II substance under the CSA.

Fentanyl accounts for a large proportion of overdose deaths in the United States and is therefore an important public safety concern. Furthermore, fentanyl is increasingly used as a stand-alone substance of abuse, not in conjunction with heroin and other substances. According to the National Forensic Laboratory Information System (NFLIS) 2021 report, fentanyl was the 4th most frequently identified drug and accounted for 11.61% of all drugs reported by forensic laboratories.[1] Norfentanyl is an important component of identifying fentanyl users when urine is the specimen matrix. Fentanyl has been detected in oral fluid in pain management patients, overdose cases, and driving under the influence of drugs (DUID) cases. Information provided by HHS-certified laboratories in 2023 indicated that a majority (84%) of the laboratories analyzed non-regulated workplace specimens for fentanyl and/or norfentanyl, and that all had the ability to analyze urine specimens for fentanyl with sufficiently sensitive detection limits using commercially available immunoassay kits and confirmatory test instrumentation commonly used in HHS-certified laboratories.

The Division of Workplace Programs welcomes public comment prior to the DTAB meeting regarding the possible addition of Fentanyl to the Urine and Oral Fluid Analyte Table. Please see below for the process to submit comments.

Addition to HHS Drug Testing Panels as listed below:

	Initial test cutoff	Confirmation cutoff
Urine Analyte:		
Fentanyl	1 ng/mL	0.5 ng/mL.
Norfentanyl	1 ng/mL	0.5 ng/mL.
Oral Fluid Analyte:		
Fentanyl	1 ng/mL	0.5 ng/mL.

Meeting registration information can be completed at *https://snacregister.samhsa.gov/.* Web conference and call information will be sent after completing registration. Meeting information and a roster of DTAB members may be obtained by accessing the SAMHSA Advisory Committees website, *https://www.samhsa.gov/about-us/advisory-councils/meetings,* or by contacting the Designated Federal Officer, Lisa Davis.

[1] National Forensic Laboratory Information System (NFLIS). (2021). *NFLIS-Drug 2021 Annual Report.* U.S. Department of Justice, Drug Enforcement Agency, Diversion Control Division. *https://www.nflis.deadiversion.usdoj.gov/.*

Committee Name: Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention, Drug Testing Advisory Board.

Dates/Time/Type: December 5, 2023, from 10 a.m. EST to 4:30 p.m. EST: OPEN.

Place: Virtual.

To Submit Comments: Requests to make public comment during the public comment period of the December DTAB meeting must be made in writing at least 7 days prior to the meeting to the following email: *DFWP@samhsa.hhs.gov.*

Please submit written comments regarding the addition of Fentanyl to the analyte table to the following email: *DFWP@samhsa.hhs.gov.*

Comments regarding the addition of Fentanyl to the analyte table will be accepted for review for an additional 30 days following this meeting, or no later than January 4th, 2024.

Contact: Lisa S. Davis, M.S., Social Science Analyst, Center for Substance Abuse Prevention, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (240) 276–1440, Email: *Lisa.Davis@samhsa.hhs.gov.*

Anastasia Flanagan,

Public Health Advisor, Division of Workplace Programs.

[FR Doc. 2023–22797 Filed 10–16–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[OMB Control Number 1651–0021]

Agency Information Collection Activities; Extension of Existing Collection; Crew Member's Declaration CBP (Form 5129)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) 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 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than December 18, 2023) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0021 in the subject line and the agency name. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Crew Member's Declaration.

OMB Number: 1651–0021.

Form Number: 5129.

Current Actions: Extension without change to the collection.

Type of Review: Extension (without change).

Affected Public: Individuals.

Abstract: CBP Form 5129, *Crew Member's Declaration,* is a declaration made by crew members listing all goods acquired abroad which are in their possession at the time of arrival in the United States. The data collected on CBP Form 5129 is used for compliance with currency reporting requirements, supplemental immigration documentation, agricultural quarantine matters, and the importation of merchandise by crew members who complete the individual declaration. This form is authorized by 19 U.S.C. 1431 and provided for by 19 CFR 4.7, 4.7a, 4.81, 122.83, 122.84, and 148.61–148.67. CBP Form 5129 is accessible at *https://www.cbp.gov/document/forms/form-5129-crew-members-declaration-and-instructions.*

Type of Information Collection: Crew Member's Declaration (Form 5129).

Estimated Number of Respondents: 6,000,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 6,000,000.

Estimated Time per Response: 10 minutes (0.166 hours).

Estimated Total Annual Burden Hours: 996,000.

Dated: October 12, 2023.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2023–22854 Filed 10–16–23; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2023–0013; OMB No. 1660–0022]

Agency Information Collection Activities: Submission for OMB Review, Comment Request; Community Rating System—Application Letter & Quick Check; Community Annual Recertification; Environmental & Historic Preservation Certification; NFIP Repetitive Loss Update Form

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 30-Day notice of renewal and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission seeks comments concerning the application for the National Flood Insurance Program's (NFIP's) Community Rating System (CRS) program. This program allows communities to become eligible for discounts on the cost of flood insurance when the communities undertake activities to mitigate anticipated damage due to flooding. The application materials verify and document the community mitigation activities performed and provides FEMA with the information necessary to determine what flood insurance premium discounts are appropriate for participating communities.

DATES: Comments must be submitted on or before November 16, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, *FEMA-Information-Collections-Management@fema.dhs.gov* or Bill Lesser, Program Specialist, Federal Insurance and Mitigation Administration, (202) 646–2807, *FEMA-CRS@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Community Rating System (CRS), codified by the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), was designed by the Federal Emergency Management Agency (FEMA) to encourage communities to undertake activities that will mitigate flooding and flood damage beyond the minimum standards for NFIP participation. This ratings system is a voluntary program for communities, and it would provide a method by which flood mitigation activities engaged in by these communities could be measured. The effect of this mitigation activity would reduce the exposure of the communities to damage resulting from flooding and in turn reduce the losses incurred as a result of this flooding. To encourage participation, discounts on flood insurance are offered within communities that successfully complete qualified mitigation actions, and the community ratings system provides the ability to measure these actions and to recertify the communities in successive years.

This proposed information collection previously published in the **Federal Register** on May 31, 2023, at 88 FR 34873 with a 60-day public comment period. Two public comments were received with one comment providing edits that FEMA has incorporated and one comment that is not germane to this collection. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Community Rating System (CRS) Program—Application Letter and CRS Quick Check, Community Annual Recertification, Environmental and Historic Preservation Certifications, and NFIP Repetitive Loss Update Form.

Type of Information Collection: Renewal of a currently approved information collection.

OMB Number: 1660–0022.

FEMA Forms: FEMA Form FF–206–FY–23–100 (formerly 086–0–35), Community Rating System Application Letter and Quick Check; FEMA Form FF–206–FY–23–101 (formerly 086–0–35A), Community Annual Recertifications, FEMA Form FF–206–FY–23–102 (formerly 086–0–35B), Environmental and Historic Preservation Certifications, and FEMA Form FF–206–FY–23–103 (formerly

086–0–35C), NFIP Repetitive Loss Update Form.

Abstract: The Community Rating System (CRS) Application Letter & Quick Check, the CRS certification forms, and accompanying guidance are used by communities that participate in the National Flood Insurance Program's (NFIP) CRS program. The CRS is a voluntary program where flood insurance costs are reduced in communities that implement practices, such as building codes and public awareness activities, that are considered to reduce the risks of flooding and promote the purchase of flood insurance.

Affected Public: State, local, or Tribal government.

Estimated Number of Respondents: 2,170.

Estimated Number of Responses: 4,170.

Estimated Total Annual Burden Hours: 52,292.

Estimated Total Annual Respondent Cost: $4,173,947.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $12,992,290.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the Agency, including whether the information shall 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2023–22851 Filed 10–16–23; 8:45 am]

BILLING CODE 9111–47–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0087]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Application for Citizenship and Issuance of Certificate Under Section 322

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted for 30 days until November 16, 2023.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2007–0019. All submissions received must include the OMB Control Number 1615–0087 in the body of the letter, the agency name and Docket ID USCIS–2007–0019.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on June 21, 2023, at 88 FR 40281, allowing for a 60-day public comment period. USCIS did receive two comment(s) in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2007–0019 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Citizenship and Issuance of Certificate Under Section 322.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–600K; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form N–600K is used by children who regularly reside in a foreign country to claim U.S. citizenship based on eligibility criteria met by their U.S. citizen parent(s) or grandparent(s). The form may be used by both biological and adopted children under age 18. USCIS uses information collected on this form to determine that the child has met all of the eligibility requirements for naturalization under section 322 of the Immigration and Nationality Act (INA). If determined eligible, USCIS will naturalize and issue the child a Certificate of Citizenship before the child reaches age 18.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection N–600K (Paper filed) is 2,187 and the estimated hour burden per response is 1.71 hours; the estimated total number of respondents for the information collection N–600K (online filing) is 2,860 and the estimated hour burden per response is 1.14 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 7,003 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $649,801.

Dated: October 10, 2023.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2023–22801 Filed 10–16–23; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6338–N–01]

Notice of Expansion and Proposed Restructuring of the Digital Opportunity Demonstration Program

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice, with request for comments.

SUMMARY: The U.S. Department of Housing and Urban Development (HUD) is committed to advancing digital opportunities in HUD-assisted communities by expanding its ConnectHomeUSA initiative to between 50 and 100 new communities. HUD's ConnectHome pilot program was launched in 2015 to address the ''homework gap'' for students in grades K–12 living in public and Indian housing. HUD partnered with interested public housing authorities and tribes to join forces with their city and tribal leadership to close this gap in twenty-eight HUD-assisted communities. Through this notice, HUD solicits comment on the expansion and restructuring of its demonstration program (ConnectHomeUSA) that is designed to further the collaborative efforts by government, industry, and nonprofit organizations to accelerate broadband internet adoption and use in HUD-assisted homes.

DATES: *Comment Due Date:* December 18, 2023.

ADDRESSES: Interested persons are invited to submit comments responsive to this Notice to the Office of General Counsel, Regulations Division, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0001. All submissions should refer to the above docket number and title. Submission of public comments may be carried out by hard copy or electronic submission.

1. Submission of Hard Copy Comments

Comments may be submitted by mail or hand delivery. Each commenter submitting hard copy comments, by mail or hand delivery, should submit comments to the address above, addressed to the attention of the Regulations Division. Due to security measures at all federal agencies, submission of comments by mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that any comments submitted by mail be submitted at least two weeks in advance of the public comment deadline. All hard copy comments received by mail or hand delivery are a part of the public record and will be posted to *http://www.regulations.gov* without change.

2. Electronic Submission of Comments

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

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the Notice.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

3. Public Inspection of Comments

All comments submitted to HUD regarding this Notice will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m., Eastern Time, weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dina Lehmann-Kim, Program Manager, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW, Room 4130, Washington, DC 20024; telephone number 202–402–2430; email: *Dina.Lehmann-Kim@hud.gov.* 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 call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION:

I. Background

Many low-income communities lack adequate access to broadband internet, which presents barriers to community members seeking economic and

educational opportunities. This is known as the digital divide. In 2015, HUD launched the Digital Opportunity Demonstration [1] to narrow the digital divide for students living in HUD-assisted communities by increasing access to broadband technology. Twenty-eight communities were selected to participate in the demonstration. Selected communities received various forms of support which included technical assistance from HUD headquarters and field office staff as well as from HUD's former nonprofit partner, EveryoneOn. Communities also had access to special offers made by private sector stakeholder organizations to EveryoneOn to support pilot communities' efforts. HUD also produced monthly newsletters and webinars designed specifically for participating communities. These provided the latest information on funding opportunities, research, best practices, and capacity-building related to digital inclusion. HUD also offered an annual two-day summit, which allowed communities to share best practices, learn from researchers or other practitioners in the field, and engage with HUD staff and staff from other federal agencies as well as private-sector stakeholders.

The demonstration program was rebranded in 2017 as ConnectHomeUSA (CHUSA) with an expanded goal of onboarding a cumulative total of 100 communities [2] by 2020.

Knowledge is a catalyst for upward mobility. Countries and local communities that cultivate access to global knowledge will thrive in an increasingly complex and technologically oriented world, while those that do not will struggle to keep pace. The adoption and use of broadband technology and associated programming are powerful tools to increase access to knowledge.

As in 2015, the jobs of tomorrow require robust technology skills. For example, over 80 percent of Fortune 500 companies require job seekers to register an account on the companies' online career site before even applying for an open position.[3] The digital divide disproportionately affects certain Americans. Over 43 percent of households with an annual income of less than $30,000 have no home broadband connection.[4] More than 31 percent of American Indian and Alaska Native, African American, and Hispanic households do not have home access to high-speed internet.[5] HUD serves these populations. 83 percent of HUD-assisted households have an annual income of less than $25,000 per year and 66 percent are African American or Hispanic (46 percent and 20 percent, respectively).[6]

Research conducted by the U.S. Government Accountability Office highlighted several significant barriers that deter the adoption of broadband technology by the communities HUD serves.[7] These barriers continue to include:

- *Cost:* The most commonly-cited barrier to broadband adoption is the high cost of internet subscriptions and computer equipment.
- *Perception:* Many individuals are concerned that broadband does not provide sufficient utility to offset its high cost or believe that broadband is not relevant to their life.
- *Skills:* Lack of technology skills often present a barrier to broadband adoption for older adults and lower-income households.
- *Infrastructure:* Tribes and rural communities face the ongoing problem of lack of available broadband infrastructure. States with large rural areas tend to have larger digital divides.[8]

This opportunity to join CHUSA comes at a time when the federal government is providing unprecedented levels of funding for broadband networking and digital equity through various programs including the Affordable Connectivity Program, the Broadband Equity, Access and Deployment (BEAD) Program, the Digital Equity Act (DEA) and other programs.[9] HUD will assist selected communities connect to these funding and other opportunities in order to minimize the barriers listed above, and close the digital divide.

II. Notice

This Notice seeks to further expand CHUSA and restructure its program model. The goal of this expansion is to add another 50 to 100 new communities. The program restructuring would adopt a three-tiered model, as described in this notice. This Notice and proposed restructuring also responds to Congressional interest [10] in having CHUSA reach more HUD-served communities.

HUD's goal is to identify new communities from urban and rural and Tribal locations with both small and large populations that have the capacity to effectively narrow the digital divide, including expanding programs and capabilities over time. HUD seeks communities where state, local or Tribal leadership has already taken steps to support the goals of CHUSA, as measured by both the community's participation in other complementary Federal initiatives such as the Affordable Connectivity Program [11] which enhance internet access in communities and by local broadband plans and strategies for implementation. HUD seeks to partner with new communities, as well as existing CHUSA communities that wish to continue their work, and provide technical assistance to these communities to identify financial, in-kind and other resources to accomplish the goals of CHUSA. In this vein, HUD encourages applicants to familiarize themselves with other Federal programs that are funding broadband, such as the

[1] *Advance Notice of Digital Opportunity Demonstration,* U.S. Department of Housing and Urban Development, **Federal Register** Notice (2015), *https://www.federalregister.gov/documents/2015/04/03/2015-07719/advance-notice-of-digital-opportunity-demonstration.*

[2] HUD achieved the goal of onboarding 100 total communities in October 2020. Complete list of communities can be found here: Communities | *HUD.gov*/U.S. Department of Housing and Urban Development (HUD).

[3] *Jobvite.com, 2021 Fortune 500 Candidate Conversion Audit, https://www.jobvite.com/lp/2021-fortune-500-report/* (accessed 8/4/2022).

[4] Vogels, *Digital Divide Persists Even as Americans With Lower Incomes Make Gains In Tech Adoption,* Pew Research Center, (2021) *https://www.pewresearch.org/fact-tank/2021/06/22/digital-divide-persists-even-as-americans-with-lower-incomes-make-gains-in-tech-adoption/* (accessed 8/4/2022).

[5] Townsend, *Disconnected: How the Digital Divide Harms Workers and What We Can Do About It,* The Century Foundation, (2020), *https://tcf.org/content/report/disconnected-digital-divide-harms-workers-can/?session=1* (accessed 8/4/2022).

[6] U.S. Department of Housing and Urban Development, *Resident Characteristics Report,* March 01, 2021 through June 30, 2022, *https://www.hud.gov/program_offices/public_indian_housing/systems/pic/50058/rcr* (accessed 8/4/2022).

[7] U.S. Government Accountability Office, Report to Congressional Requesters, *Broadband: Intended Outcomes and Effectiveness of Efforts to Address Adoption Barriers Are Unclear,* (2015), *https://www.gao.gov/products/gao-15-473* (accessed 8/4/2022).

[8] Frost, *Pandemic Highlights Disparities in High-Speed Internet Service,* Joint Center for Housing Studies, Harvard University, (2021), *https://www.jchs.harvard.edu/blog/pandemic-highlights-disparities-high-speed-internet-service* (accessed 10/14/2022).

[9] *https://www.affordableconnectivity.gov/; https://broadbandusa.ntia.doc.gov/funding-programs/broadband-equity-access-and-deployment-bead-program; https://www.internetforall.gov/program/digital-equity-act-programs; https://www.internetforall.gov/.*

[10] See FY21 Congressional Appropriations Conference Report: *https://docs.house.gov/billsthisweek/20201221/BILLS-116RCP68-JES-DIVISION-L.pdf;* and see FY22 Congressional Appropriations Conference Report: *BILLS-117RCP35-JES-DIVISION-L.pdf* (*house.gov*).

[11] The Affordable Connectivity Program provides a monthly subsidy of up to $30 ($75 on qualifying Tribal lands) to cover the cost of internet service for low-income Americans. For more information to go: Affordable Connectivity Program | Federal Communications Commission (*fcc.gov*).

Broadband Equity, Access and Deployment grant ($42.45 billion) and the Digital Equity Act grant program ($2.75 billion) by going to this comprehensive website: *www.internetforall.gov.*

The number of communities served by CHUSA will depend on the number of communities that commit to narrowing the digital divide and that meet certain criteria. Exhibit A below sets forth these proposed criteria to restructure the program to create optimal conditions to accelerate the adoption and use of broadband technology and expand this technology within new and existing communities.

HUD would restructure the program to establish three tiers. Each tier is intended to be flexible, recognizing the diverse set of communities being considered for or already participating in CHUSA. Tier 1 addresses new communities. Tier 2 concerns existing communities, including those that can assist new communities. Tier 3 are those communities that complete the criteria of Tier 2 and wish to further evaluate and refine their existing connectivity solution to ensure it best meets their community's needs. HUD will not solicit any Tier 3 communities at this stage.

There is no Congressional funding for CHUSA; the program implementation is contingent upon HUD resources such as staffing and technical assistance. As this expansion proceeds, HUD will continue to assess community interest and the availability of HUD staffing resources to support participation by additional communities. HUD will also assess the effectiveness of the selection criteria within the three tiers on an ongoing basis. Such assessment may expand the number of participating communities, revise the selection criteria, or both to reflect HUD's experience in implementing CHUSA.

III. Evaluating ConnectHomeUSA

HUD intends to extend the outcomes of CHUSA, with the goal of increasing the number of participating communities. To this end, HUD will work with entities across the government, its nonprofit partner, EducationSuperHighway,[12] and the research community to rigorously measure outcomes associated with the work of CHUSA to narrow the digital divide.[13] The participating communities are expected to participate in any efforts designed to identify and share best practices with other HUD-assisted communities. In addition, participating communities will be required to measure and report outputs and outcomes.

IV. Solicitation of Public Comments

In accordance with 24 CFR part 10 and section 470 of the Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 3542), HUD is seeking comment on this expansion and restructuring of the CHUSA initiative in this **Federal Register** notice for 60-days of public comment. The public comment period provided allows HUD the opportunity to consider comments and be in a position to commence implementation of the expansion following the conclusion of the 60-day period. [*Note:* Do not submit application documents as public comments. See Section E in Exhibit A below for CHUSA application instructions.] HUD is also interested in receiving comments about specific areas. HUD will evaluate responses to the questions below and may modify the design of the program. If HUD decides to announce any changes to the program, HUD will provide notice to the public prior to requesting applications.

1. The Digital Inclusion Stool (See Paragraph A.1 in Exhibit A)

The primary focus of CHUSA addresses the three legs of the digital inclusion stool. HUD asks Tier 2 and Tier 3 communities to use their accomplishments in addressing the digital inclusion stool as a platform for helping residents achieve other outcomes by entering into agreements with quality-of-life partners. Should HUD ask communities to focus on other areas such as employment and education?

2. Tiered Model

a. Is the support HUD describes sufficient for each Tier, or should HUD consider other forms of support? If so, what kind? To answer this question, HUD recommends reviewing paragraph B.3 in Exhibit A.

b. Should HUD consider other achievements in order for Tier 1 communities to be able to graduate to Tier 2 and for Tier 2 communities to graduate to Tier 3? To answer this question, HUD recommends reviewing paragraph C in Exhibit A.

c. The proposed focus of Tier 3 is connectivity; should Tier 3 focus on other elements instead or in addition to connectivity?

3. Required Levels of Engagement (See Section C in Exhibit A)

a. Staffing. During the implementation of both the pilot ConnectHome and expansion CHUSA programs, HUD found communities with dedicated staff support were generally more successful. For this reason, HUD is asking communities to identify a staff person who would be responsible for leading this work. HUD is interested in understanding whether this requirement is overly burdensome.

b. Data Collection. HUD is proposing that selected communities report on a quarterly basis the number of in-home internet connections, devices, and digital skills trainings residents complete each quarter. Is this frequency enough, is it burdensome, and what challenges to collecting this data should HUD be aware of? Should HUD consider other metrics? Finally, how should HUD share or display the data collected—should it be available to the public or shared only with participating communities?

c. Three-year commitment. HUD is asking communities to commit to a three-year program. Is this period long enough to help communities realize gains in each area of the digital inclusion stool or should HUD consider a different time period?

4. Digital Badges (See Paragraph B.5 of Appendix A)

HUD is proposing a variety of digital badges to recognize programmatic achievements. Some of these badges will be required to graduate to a higher tier. Are there other ways HUD could recognize community achievements or other achievements HUD should recognize?

5. Resources

There are new federal funding resources available to address the three legs of the digital inclusion stool, such as the Affordable Connectivity Program which covers up to $30 for internet service (and up to $75 on tribal lands) for qualifying families. There are also forthcoming Digital Equity Act funds that will provide funding for the types of activities CHUSA communities undertake. In addition to these resources as well as access to HUD staff, HUD-provided technical assistance, and EducationSuperHighway's expertise, HUD is interested in understanding whether there are other resources that communities would find useful in order to implement a CHUSA program.

[12] *https://www.educationsuperhighway.org/.*

[13] In 2018, HUD conducted a study of the original pilot program and found that the ConnectHome intervention helped 71% use the internet for activities they could not previously undertake due to reliance on a cell phone with limited data (p. 39). See: ConnectHome Initiative—Full Report (*huduser.gov/portal/publications/ConnectHome.html*).

6. Selection Criteria (See Sections C and D of Appendix A)

Are there other factors HUD should consider when evaluating applications?

Dominique Blom,

General Deputy Assistant Secretary—Public and Indian Housing.

Exhibit A

Restructuring the ConnectHomeUSA Program

A. Background

The U.S. Department of Housing and Urban Development (HUD) has long understood the importance of bridging the digital divide. Since 1995, HUD has engaged in various digital inclusion efforts, including community-based programs such as Neighborhood Networks and CHUSA. HUD has also updated regulations to assess the need for and allow the use of HUD funding for broadband-related uses.[14] These efforts have helped to ensure HUD-assisted residents' broadband needs are addressed within the parameters of HUD's existing authorities and funding.

HUD is committed to further narrowing the digital divide in HUD-assisted communities. The further expansion of CHUSA announced in this Notice builds on best practices and lessons learned from the 100 communities that have joined ConnectHome or CHUSA since 2015. The expansion also responds to Congressional interest[15] in seeing CHUSA grow. With the support of HUD's new nonprofit partner, EducationSuperHighway (ESH), this expansion will create a new tiered model to support participating communities' digital inclusion and digital equity goals.

The opportunity to join CHUSA comes at a time when the federal government is providing unprecedented levels of funding for broadband networking and digital equity through various programs including the Affordable Connectivity Program, the Broadband Equity, Access and Deployment Program, the Digital Equity Act and other programs.[16] HUD will assist selected communities to connect to these funding opportunities.

[14] Narrowing the Digital Divide Through Installation of Broadband Infrastructure in HUD-Funded New Construction and Substantial Rehabilitation of Multifamily Rental Housing (December 2016); Modernizing HUD's Consolidated Planning Process to Narrow the Digital Divide and Increase Resilience to Natural Hazards (December 2016); and Use of Public Housing Funding to Support internet Connectivity for Residents (January 2021).

[15] See FY21 Congressional Appropriations Conference Report: *https://docs.house.gov/billsthisweek/20201221/BILLS-116RCP68-JES-DIVISION-L.pdf;* and see FY22 Congressional Appropriations Conference Report: *BILLS-117RCP35-JES-DIVISION-L.pdf* (*house.gov*).

[16] *https://www.affordableconnectivity.gov/; https://broadbandusa.ntia.doc.gov/funding-programs/broadband-equity-access-and-deployment-bead-program; https://www.internetforall.gov/program/digital-equity-act-programs; https://www.internetforall.gov/.*

1. Goals of CHUSA

The overarching goal of CHUSA is to assist participating communities to effectively bridge the digital divide by addressing the three primary barriers to internet adoption in low-income communities:

- High cost or lack of internet service;
- High cost or lack of computing devices (smart phones are not considered computing devices for the purposes of CHUSA); and
- The need for hands-on digital literacy training.

These three elements are commonly referred to as ''the three legs of the digital inclusion stool.''

Successfully addressing the digital inclusion stool requires contributions from various organizations—no single organization can do this work alone. For this reason, the collective impact model[17] is the organizing principle around which CHUSA is based. This principle relies on one organization acting as the conductor, or leader, that organizes the symphony of partners towards achieving the agreed-upon goal of narrowing the digital divide in the targeted community. In the case of CHUSA, the housing entity such as a PHA usually serves as the lead organization.

During the course of a three-year commitment, Tier 1 communities establish goals and partnerships that address all three legs of the digital inclusion stool. Tier 2 and Tier 3 communities continue this work and use it as a platform for enhancing the economic, educational, and social well-being of the public and assisted housing residents in their targeted neighborhoods. Tier 2 and 3 communities will be asked to enter into an agreement with a ''quality-of-life'' partner such as a community college, apprenticeship program, local employer, or other organization.

B. Scope of Expansion and Timeline for Selection

1. Scope of Expansion

With this Notice, HUD is announcing a 50–100 community expansion of the CHUSA program. HUD seeks applicants from the Public and Indian Housing and Multifamily Housing programs from all HUD regions.

HUD recognizes that some communities may be new to the work of digital inclusion while others may be ready for a deeper investment, and still others might fall somewhere in between. For this reason, HUD has established a three-tiered model that would allow communities to take an incremental approach to this work. All communities, except existing CHUSA communities, would apply to join Tier 1. Existing CHUSA communities are encouraged to apply as Tier 2 communities. If selected, HUD (with support from its nonprofit partner, ESH) will work with communities to help them reach the level of engagement, or tier, they are most interested in pursuing.

2. Eligible Applicants

HUD seeks applicants from all ten HUD regions, Public and Indian Housing, and Multifamily Housing programs (including (but not limited to) Section 8 Project-Based Rental Assistance, Section 202, and Section 811 programs). Applications can be submitted by:

- Public Housing Agencies or their nonprofit affiliates;
- Tribes/Tribally Designated Housing Entities; and
- Multifamily owners and operators.

[17] *https://socialinnovation.usc.edu/wp-content/uploads/2018/06/Collective-Impact-Handout.pdf.*

3. Tiered Model

Closing the digital divide requires many organizations working together. The new CHUSA program allows communities to build their capacity and partnerships over time. This approach facilitates the creation of robust and sustainable digital inclusion programs.

Tier 1 helps communities put in place the key components around the digital inclusion stool that are necessary for building a comprehensive digital inclusion program. Tier 2 will support communities' plans to grow their programs by offering more hands-on assistance tailored to the individual community's needs from HUD Headquarters and field staff as well as support from ESH. The areas of assistance offered could range from connecting to local partners, assisting with the development of the CHUSA Action Plan and convenings, providing information about funding opportunities, or other technical assistance. Tier 3 is reserved for communities that have met the requirements of Tier 2 and wish to evaluate their existing connectivity solution, refine it, or develop a customized connectivity solution that best meets the needs of their targeted neighborhoods and properties while still providing programs that address the three legs of the digital inclusion stool and their quality-of-life goals. With the exception of existing CHUSA communities, this Notice is asking interested applicants to sign on as Tier 1 communities. Former or current CHUSA communities are encouraged to apply to join as Tier 2 communities.

Each tier will have reporting requirements that will allow communities to demonstrate achievement of specific metrics that signal progress and will allow communities to eventually graduate to a higher tier. HUD will award distinct electronic badges for each metric attained. Communities can use these badges to display on their websites, social media sites, marketing or other communications materials, and share with potential funders. See paragraph 5 below for a description of the badges HUD will award.

a. Tier 1: Basic Engagement Requirements

This introductory level asks participating communities to commit to closing the digital divide in their communities by:

- Using existing CHUSA technical assistance tools and products[18] to deepen their understanding of digital inclusion; and

[18] CHUSA TA products include: The CHUSA Playbook; webinars tied to Playbook chapters; toolkits, guides and planning documents; and the annual CHUSA Summits. *Note:* Tier 1 communities will have access to in-person summits on a space-available basis, but will have access to all virtual broadcasting of the summits. *https://*

Continued

• Assigning a staff lead to begin establishing the necessary elements and partnerships to close the digital divide in their communities (see Section C, ''Application and Criteria for Participation'' below).

Interested communities can qualify for this tier by submitting a Letter of Intent indicating their interest in joining the initiative. See Section C ''Application and Criteria for Participation'' below for Letter of Intent requirements.

HUD Support

If selected for Tier 1, you will receive:

• An electronic badge indicating your official participation in Tier 1. This badge can be used to announce your participation in this national initiative, posted on your website, shared with potential funders, and used in other communications materials;

• Access to all future CHUSA technical assistance announcements including invitations to webinars, special events, and summits (Note: Tiers 2 and 3 will receive priority for in-person events);

• Invitations to collaborate on CHUSA events that may be facilitated by HUD; and

• Information about and support for connecting to opportunities funded under the Broadband Equity, Access and Deployment Program, and the Digital Equity Act.

b. Tier 2: Intermediate Engagement Requirements

Existing CHUSA communities can qualify for this tier by submitting a Letter of Intent indicating their interest in continuing participation for an additional three years (See Section C, ''Application and Criteria for Participation'' below for Letter of Intent requirements).

HUD Support

If selected for Tier 2, you will receive:

• All HUD support included in Tier 1;

• Electronic badges indicating specific accomplishments (*e.g.,* number of residents trained) which can be used to demonstrate accomplishments to partners and funders;

• Access to HUD staff for organizational assistance with local CHUSA convenings and troubleshooting challenges;

• Technical assistance from HUD and ESH to help address connectivity challenges and support for the initial development of a customized connectivity plan (if applicable);

• Specific guidance around BEAD and DEA funding requirements and opportunities;

• Access to *all* stakeholder offers that may be limited to CHUSA communities;

• Access to CHUSA VISTA positions on a first-come, first-served basis; and

• Priority registration for the CHUSA annual summit.

c. Tier 3: Advanced Engagement Requirements

Tier 2 communities that have fulfilled all requirements can move to Tier 3 by demonstrating an interest in evaluating their existing connectivity solution, refining it, and/or developing a customized connectivity solution that would allow for free or very affordable service for their residents that:

• Creates innovative and sustainable connectivity solutions that can serve as replicable models for other affordable housing providers;

• Continues to provide digital literacy training and access to affordable devices; and

• Creates pathways into apprenticeships and/or employment in fields requiring digital skills (in collaboration with the existing quality-of-life partner or other organizations).

HUD Support

If selected for Tier 3, you will receive:

• All HUD support included in Tier 2;

• If funds allow, a dedicated HUD staff person to support your work;

• Ongoing support from HUD and ESH to provide technical assistance towards developing and implementing a customized connectivity solution; and

• Enhanced HUD collaboration around community-driven outreach and goals.

4. Changing Tiers

Communities selected to participate in Tier 1 or Tier 2 may submit a request to move to the next tier at any time during the three-year term. They must submit a Letter of Intent to *ConnectHome@hud.gov* that demonstrates they have met the requirements of their existing tier (see Section C, ''Application and Criteria for Participation'' below) and are ready to implement the requirements of the tier they wish to join.

5. Electronic Badges

HUD will award badges to officially recognize communities participating in this program for key accomplishments. Receipt of key badges will be necessary to move to the desired tier. As the program unfolds, additional badges may be created. The types of badges include:

- Designation as CHUSA Community:
  - Tier 1 ConnectHomeUSA Badge
  - Tier 2 ConnectHomeUSA Badge
  - Tier 3 ConnectHomeUSA Badge
- Program Accomplishments:

Badge level	Connectivity (percentage of target units connected)	Devices (number of devices distributed, % of goal)	Training (number of residents completing digital skills training, % of goal)
Bronze	25	25	25
Silver	50	50	50
Gold	85	85	85
Platinum	90–100	90–100	90–100

- Program Milestones:
  - Baseline Survey Completed
  - Convening Held
    - Bronze (Year 1)
    - Silver (Year 2)
    - Gold (Year 3)
    - Platinum (for Tier 3)
  - Action Plan Submitted and Approved
    - Bronze (Year 1)
    - Silver (Year 2)
    - Gold (Year 3)
    - Platinum (for Tier 3)
  - Memorandum of Understanding (MOU) with State or City/Tribal Leadership Finalized
  - MOU with Quality-of-Life Partner Finalized
  - Data Leader
  - Digital Ambassador Program Established
  - Digital Inclusion Coalition Established
  - Designated Mentor Community (for other CHUSA communities)

6. Number of Communities To Be Selected

HUD will select between 50 and 100 communities to join Tier 1. Existing CHUSA communities wishing to continue their participation in the initiative can apply to join as Tier 2 communities.

7. Application Due Date

Letters of Intent are due February 15, 2024. Letters of Intent must be submitted to the following email address: *CHUSA_applications@hud.gov.*

8. Date of Announcement of Selected Communities

HUD will announce selected communities by MAY 15, 2024.

9. Commitment Period

Communities will be expected to commit to participation in CHUSA for a period of three years.

10. Extension Periods

Participating communities may request to extend their period of participation beyond three years. For example, communities in Tier 1 that advance to Tier 2 during the course of their first three-year term, may wish to continue participating for a longer period to achieve the goals associated with Tier 2.

www.hudexchange.info/programs/connecthomeusa/.

Communities wishing to extend their participation should email their request to *ConnectHome@hud.gov.* HUD staff will work with the community to determine if an extension is warranted.

C. Application and Criteria for Participation

Applicants interested in either Tier 1 or Tier 2 must submit a Letter of Intent to *CHUSA_applications@hud.gov.* Interested applicants should familiarize themselves with the application requirements and program expectations described below. Tier 2 is reserved for communities that were part of the ConnectHome pilot program or the CHUSA program.

Tier 1: Basic Engagement—Application Requirements

Application Requirements

In order to indicate your interest in joining the CHUSA initiative as a Tier 1 community, you must submit a Letter of Intent indicating that you will begin working to close the digital divide in your community. The letter must indicate how you will meet the required levels of engagement outlined in the paragraph below. The letter must be submitted to *CHUSA_applications@hud.gov,* must include a primary point of contact, and must be signed by your Executive Director or other official authorized to make this commitment.

Required Levels of Engagement

If selected, you will be asked to commit to the following over a three-year period:

- Assign a staff member(s) to lead the work (learning about digital inclusion, sharing findings with key staff, developing an initial Action Plan. See the Launchpad chapters of the CHUSA Playbook [19] and the associated Toolkits [20]);
- Indicate which developments you are targeting; please include the addresses and number of units;
- Administer a baseline resident survey to understand the level of need for connectivity, devices, and digital skills training by the end of the first year of receiving your CHUSA designation;
- Establish annual internet adoption, device, and training goals for each of the three years of your participation;
- Participate in CHUSA-sponsored training events such as webinars and conferences. (NOTE: Tier 1 communities will be able to participate in annual in-person CHUSA summits on a space-available basis but they will be able to participate in any virtual portions);
- Participate in community of practice forums that may be established for this Tier; and
- Submit quarterly reports on the achievement of the metrics associated with Tier 1 as relevant (see below).

Graduating to Tier 2

At any time during the initial three-year period, if your community is interested in moving to Tier 2, you will be required to submit a new Letter of Intent that matches the application requirements for Tier 2 and demonstrates the accomplishment of the criteria outlined below:

- Using your baseline survey results as a guide, describe annual connectivity, device, and training goals leading to a three-year goal of connecting 85% of your target population by the end of three years;
- Hold a convening of local and national stakeholders and partners who can assist you in reaching your goals (see CHUSA Playbook Chapter 4 on Convenings and the associated Convening Toolkit);
- Submit to your local HUD ConnectHomeUSA lead a CHUSA Action Plan outlining your goals (see the Action Plan template [21] and Playbook Launchpad Chapters 1–5) and receive HUD approval;
- Enter into a formal partnership agreement with your state or municipal leadership and a quality-of-life partner; and
- Commit to submitting quarterly reporting on the number of connections, devices, and digital literacy training completions.

Tier 1 Badges Required for Graduating to Tier 2

- Baseline Survey Completed
- Convening Held
- Action Plan Submitted and Approved
- MOU with City/Tribal Leadership Finalized
- MOU with Quality-of-Life Partner Finalized

Tier 2: Intermediate Engagement

With this Notice, HUD is asking existing CHUSA communities (or previous pilot communities) to formally opt into this expansion by submitting a Letter of Intent that addresses the elements outlined in the ''Application Requirements'' paragraph below. CHUSA communities accepted into Tier 2 will also be expected to meet the requirement specified in the ''Required Levels of Engagement'' paragraph below.

Tier 2 requires active engagement by three entities: the housing provider, state or municipal leadership, and a quality-of-life partner. The three entities must commit to working together to close the digital divide and leverage connectivity gains to help residents make progress in other socio-economic areas.

Application Requirements

CHUSA communities interested in continuing their participation in this initiative must submit a Letter of Intent that:

- Identifies key staff person(s) responsible for carrying out your CHUSA program;
- Quantifies your connectivity, device, and training achievements *to date.* This will serve as a baseline against which to measure your future progress;
- Indicates the targeted developments for this phase of your participation and the number of units;
- Commits to administering another baseline survey in the first six months to inform your ongoing connectivity, device, training, and other goals;
- Describes your vision and goals (including for connectivity, devices, and training) for this phase of your participation (*Note:* goals may be updated after results are obtained from the baseline survey) and how this work will be supported by your organization's leadership;
- Identifies a state or municipal or tribal partner agency and contact; and
- Identifies a quality-of-life partner and contact.

Required Levels of Engagement

If selected, you will be asked to commit to the following over a three-year period:

- Assign a staff person(s) responsible for carrying out your CHUSA program;
- Administer a baseline resident survey within the first six months to understand the level of community need for connectivity, devices, digital literacy training; and other areas of interest (*e.g.,* workforce development and apprenticeships, etc.). The results will be used to refine the goals you outlined in your application;
- Host a local convening (may be virtual) of current and potential CHUSA stakeholders to form partnerships. The convening must be completed no later than six months after being selected (see ConnectHomeUSA Playbook Chapter 4);
- Submit an Action Plan (See template on HUD Exchange, Playbook Launchpad chapters 1–5, and the accompanying Launchpad Toolkit) targeting the identified needs from the baseline survey to HUD CHUSA staff no later than 3 months after your convening;
- Establish annual internet adoption, device, and training goals for each of the three years of your participation;
- Your connectivity goal should lead to 85% connectivity of your target community by the end of the three years;
- Enter into an agreement with a third-party partner to bring employment, education, or other related opportunity to the targeted community by the end of the first year;
- Use HUD or ESH-indicated reporting tool to track progress on a quarterly basis (see Tier 2 Badges paragraph below);
- Participate in monthly regional HUD calls and/or other community of practice forums that may be established;
- Participate in the annual CHUSA Summits (either virtually or in-person).

Tier 2 Badges

Using data you submit during the course of your participation in Tier 2, you will be eligible to receive badges for achievements related to connectivity, devices, training as well as badges that recognize project milestones.

- By the end of year 1, we will expect the following badges to be earned:
  - Bronze badges for all three legs of the digital inclusion stool
  - Baseline Survey Completed
  - Convening Held (Bronze)
  - Y1 Action Plan Submitted and Approved
  - MOU with City/Tribal Leadership Finalized
  - MOU with Quality-of-Life Partner Finalized

[19] *https://static1.squarespace.com/static/590bfab229687fec92f55513/t/5df26fd4d153a4617e035aad/1576169435094/ConnectHomeUSA+Playbook+2019+1-8_Final.pdf.*

[20] *https://www.hudexchange.info/programs/connecthomeusa/playbook-toolkits-and-guides/.*

[21] *https://www.hudexchange.info/resource/6723/connecthomeusa-action-plan-toolkit/.*

- By the end of year 2, we will expect the following badges to be earned:
  - Silver badges for all three legs of the digital inclusion stool
  - Y2 Action Plan Submitted and Approved (Silver badge)
  - Convening Held—Silver (Optional but encouraged)
- By the end of year 3, we will expect the following badges to be earned:
  - Gold badges for all three legs of the digital inclusion stool
  - Y3 Action Plan Submitted and Approved (Silver badge)
  - Convening Held—Gold (Optional but encouraged)

Graduating to Tier 3

Tier 2 communities that have made significant strides in connecting residents to in-unit internet service, devices and training (attainment of silver badges in two of these areas will be required as a minimum) and that wish to deepen their digital inclusion work by evaluating their existing connectivity solution, refining it, and/or developing a customized connectivity solution that best meets the needs of their targeted communities may contact their HUD CHUSA staff to join Tier 3.

Tier 3: Advanced Engagement

HUD and ESH staff will work closely with these communities to help them assess their current connectivity solution, refine and/or create customized connectivity solutions, address challenges, and identify outside resources to support the work. These communities will be required to continue to report and to develop an Annual Action Plan for the duration of their participation (between 1–3 years).

D. Selection Criteria

Tier 1: Basic Engagement

HUD is looking for comprehensive and detailed responses to the criteria outlined under Section C, ''Application and Criteria for Participation'' for this tier. Letters of Intent should clearly demonstrate a strong interest in narrowing the digital divide in the target communities.

Tier 2: Intermediate Engagement

HUD is looking for comprehensive and detailed responses to the criteria outlined under ''Application and Criteria for Participation'' for this tier. Letters of Intent should clearly demonstrate a strong commitment to narrowing the digital divide in your target communities and demonstrate strong partnerships with state, local or Tribal government and a quality-of-life partner. Letters of Intent should clearly describe how the applicant's organization will support the work and how this work can complement the organization's other self-sufficiency efforts or programs.

Tier 3: Advanced Engagement

No applications for this Tier are being accepted at this time. Tier 2 communities that demonstrate significant progress in each area of the digital inclusion stool (silver-level badges will be required for at least two of the three legs of the stool) as well as ongoing commitment to this work through the active engagement of staff and regular reporting, will be able to move to this tier and benefit from the tailored assistance aligned with this tier.

E. CHUSA Application Instructions

Eligible entities interested in applying to join this expansion of CHUSA should send a Letter of Intent to: *CHUSA_applications@hud.gov.* This Letter of Intent serves as an application to participate in the CHUSA expansion detailed in this notice. See Section C, ''Application and Criteria for Participation'' for details regarding the Letter of Intent.

Applications will be accepted by HUD beginning 61 days after the publication of this notice in the **Federal Register**. All applications must be submitted by February 15, 2024. Any application submitted after this deadline will not be accepted.

[FR Doc. 2023–22800 Filed 10–16–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7070–N–75]

30-Day Notice of Proposed Information Collection: Housing Counseling Training Program, OMB Control No.: 2502–0567

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 16, 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: Colette Pollard, 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: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *Colette.Pollard@hud.gov;* telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on March 17, 2023 at 88 FR 16457.

A. Overview of Information Collection

Title of Information Collection: Housing Counseling Training Program.

OMB Approval Number: 2502–0567.

OMB Expiration Date: November 30, 2023.

Type of Request: Revision of a currently approved collection.

Form Numbers: SF–424; HUD–92910; HUD–2880; SF–425.

Description of the need for the information and proposed use: Eligible organizations submit information to HUD through *Grants.gov* when applying for grant funds to provide housing counseling training to housing counselors. HUD uses the information collected to evaluate applicants competitively and then select qualified organizations to receive funding that supplement their housing counseling training program. Post-award collection, such as quarterly reports, will allow HUD to evaluate grantees' performance.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents: 42.

Estimated Number of Responses: 60.

Frequency of Response: One-time application and quarterly reports.

Average Hours per Response: 28.7.

Total Estimated Burden: 1,722 hours.

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.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2023–22846 Filed 10–16–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7070–N–72]

30-Day Notice of Proposed Information Collection: Comment Request; FHA Insured Title I Property Improvement and Manufactured Home Loan Programs; OMB Control No.: 2502–0328

AGENCY: Office of 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 16, 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: Colette Pollard, 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: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on July 26, 2023 at 88 FR 48259.

A. Overview of Information Collection

Title of Information Collection: Title I Property Improvement and Manufactured Home Loan Programs.

OMB Control Number, if applicable: 2502–0328.

Type of Request: Extension of currently approved collection.

Description of the need for the information and proposed use: Title I loans are made by private sector lenders and insured by HUD against loss from default. HUD uses information about Title I loan borrowers to evaluate individual loans on their overall program performance. The information collected is used to determine insurance eligibility and claim eligibility. HUD proposes adopting the URLA and amending forms 56001 and 56001–MH to capture Title I Loan program specific information which will simplify the form, avoid unnecessary duplication, and reduce the burden to the public. This information is necessary for HUD to capture information effective in determining overall program performance, insurance and claim eligibility and risk management.

Agency form numbers, if applicable: HUD–637, 27030, 55013, 55014, 56001, 56001–MH, 56002, 56002–MH, & SF 3881.

Respondents: The respondents are lenders.

Estimation of the total numbers of hours needed to prepare the information collection:

Estimated Number of Respondents: 510.

Estimated Number of Responses: 38,515.

Frequency of Response: On occasion, periodic.

Average Hours per Response: 10.01.

Total Estimated Burdens: 23,180.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) 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.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2023–22845 Filed 10–16–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7070–N–73]

30-Day Notice of Proposed Information Collection: The Community Choice Demonstration; OMB Control No.: 2528–0337

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 16, 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 June 22, 2023 at 88 FR 40841.

A. Overview of Information Collection

Title of Information Collection: The Community Choice Demonstration.

OMB Approval Number: 2528–0337.

Type of Request: Revision of a currently approved collection.

Form Number: N/A.

Description of the need for the information and proposed use: The U.S. Department of Housing and Urban Development (HUD) has contracted with Abt Associates to conduct an evaluation of its Community Choice Demonstration (formerly Housing Choice Voucher Mobility Demonstration). This proposed information collection involves three instruments that will be administered to subsets of households participating in the Demonstration: a Home Assessment, a Child Assessment, and an Obesity and Type II Diabetes Risk Assessment.[1] The Home Assessment will assess how moving to an opportunity area affects exposure to pest allergens and indoor pollutants that may impact health conditions among low-income children. The Child Assessment will assess how moving to an opportunity area may affect children's conduct problems and physical and mental health. The Obesity and Type II Diabetes Risk Assessment will assess how moving to an opportunity area affects the risk of obesity and type II diabetes (primarily for the head of household and secondarily for one child in each household).

The Home and Child Assessments are funded by HUD and being conducted by Abt Associates. HUD's contract with Abt Associates provides flexibility to explore collaborations with other researchers and funders to support additional knowledge-building efforts that build on the foundation laid by the Demonstration so long as they advance important research objectives, do not interfere with the core Demonstration, and are structured in a way that minimizes overall respondent burden. The Obesity and Type II Diabetes Risk Assessment represents one such collaboration; it is funded by the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK)[2] and led by Johns Hopkins University (JHU) as part of a study called the Mobility Opportunity Vouchers for Eliminating Disparities (MOVED) study. The data collection for the MOVED study will also be conducted by Abt. While NIH-funded studies do not normally require the submission of an information collection request for compliance with the Paperwork Reduction Act, we are including the Obesity and Type II Diabetes Risk Assessment as part of this information collection request because it will be administered to a subset of households participating in the HUD-funded Demonstration. In addition, the Child Assessment will be administered during the same visit, to the same households, and by the same interviewers as the Obesity and Type II Diabetes Risk Assessment.

Background on Housing Choice Voucher Mobility Demonstration

The Consolidated Appropriations Act, 2019 (Pub. L. 116–6) and the Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94) authorized the U.S. Department of Housing and Urban Development (HUD) to implement and evaluate the Housing Choice Voucher (HCV) Mobility Demonstration (now referred to as the Community Choice Demonstration or CCD or ''Demonstration''). The primary purpose of the Demonstration is to provide voucher assistance and mobility-related services to families with children to encourage families to move to lower-poverty areas and expand their access to opportunity areas. The Demonstration will be evaluated using a mix of methods, including a random assignment impact study, a process study, and a cost analysis. The Demonstration has two phases: In Phase 1, currently underway, enrolled families are being assigned to two groups: one group that is offered Comprehensive Mobility Related Services (CMRS), and a control group that is offered usual

[1] As discussed below, the Obesity and Type II Diabetes Risk Assessment is also known as the Mobility Opportunity Vouchers for Eliminating Disparities (MOVED) study.

[2] The NIDDK grant number is R01DK136610.

PHA services. In Phase 2, scheduled to begin in the fall of 2024, a second treatment group will be added that runs concurrently with the CMRS and control groups, in which families will be offered selected mobility-related services (SMRS). (In Phase 2, families will be randomly assigned to one of three groups: CMRS, SMRS, or the control group.) Phase 1 of the study is evaluating whether the offer of CMRS helps families with children access and remain in opportunity areas and exploring which services appear to be most effective and cost-effective. Phase 2 will evaluate the effectiveness of SMRS and compare the outcomes of CMRS and SMRS. For more information on the underlying housing mobility demonstration program, see HUD's website at *https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/communitychoicedemo* and *https://www.hudexchange.info/programs/public-housing/housing-mobility-toolkit/.*

On May 31, 2022 and June 9, 2022, OMB approved the administration of a series of data collection instruments as part of the Demonstration; OMB approved non-substantive changes to this information collection in October 2022. The OMB Control # is 2528–0337 and expires June 30, 2025. OMB approved non-substantive changes to this information collection in October 2022.

Revised Information Collection Request

Through this revised information collection request, we are seeking approval for three new assessments: a Home Assessment, a Child Assessment, and an Obesity and Type II Diabetes Risk Assessment. The collection of information through these three assessments, and through the underlying Demonstration, will be closely coordinated to minimize burden on families and ensure there is no duplication in data collection across each of the assessments and between the assessments and the Demonstration.

We seek approval for two rounds of data collection (baseline and follow-up assessments) for each of these three assessments, which are described in more detail below.

Home Assessment

The Home Assessment will be administered at two of the eight Demonstration sites and include the heads of household of an estimated 570 households. Households selected to participate in the Home Assessment will be contacted shortly after random assignment in the Demonstration for a baseline Home Assessment that will include three components: direct measurements of pest allergens and indoor air quality, a brief survey, and observations noted by the interviewer. The same data collection will be repeated approximately 12 months later.

The direct assessment will measure (1) temperature and relative humidity, (2) carbon dioxide, (3) carbon monoxide, (4) mouse and cockroach allergens, (5) particulate matter, and (6) volatile organic compounds (chemicals that enter the air from paints, cleaners, etc.). The brief survey will obtain information from the parent or guardian on risk factors for asthma and other respiratory conditions and child health conditions, such as exposure to cigarette smoke through smokers in the household or building. The interviewer observations will focus on risk factors for asthma and respiratory conditions and housing and neighborhood quality.

Child Assessment

The Child Assessment will be conducted at three Demonstration sites that are different from those of the Home Assessment to minimize the reporting burden on participating families. The Child Assessment will be administered to one child and to the parent or guardian of that child in each of an estimated 837 households who have a child between ages 2 and 15. The study team will conduct in-person visits over a 3.5-year data collection period, at two points in time: at baseline and at a 2-year follow up. The Child Assessment will involve a survey about a prespecified focal child and a direct assessment of that child's executive functioning. Most of the questions on the survey will be asked of the parent or guardian, with some questions being asked directly of children.

Obesity and Type II Diabetes Risk Assessment

The Obesity and Type II Diabetes Risk Assessment will be administered to the same households that are participating in the Child Assessment during the same visit. The Obesity and Type II Diabetes Risk Assessment will also be administered to some households that do not have a child in the age range specified for the Child Assessment and to some families that decline to participate in the Child Assessment. As with the Child Assessment, the data collection will focus on one child in each household along with the parent or guardian of that child. The Obesity and Type II Diabetes Risk Assessment, which is expected to be administered to a total of 900 households, includes:

- an adult survey
- anthropometric assessments (height, weight, and waist circumference) of the adult and one focal child
- blood spot samples to test HbA1c levels (a measure of diabetes risk) of the adult
- blood pressure readings
- observations noted by the interviewer, and
- accelerometer data on a sub-set of 400 adults and 400 children.

At the 2-year follow-up visit, the study team will conduct a follow-up Obesity and Type II Diabetes Risk Assessment that will include the same components with all households that can be located and agree to participate. In addition, semi-structured interviews will be conducted with a subset of 75 households. The interviews will dive deeper into the factors explored in the survey that are potentially associated with obesity and Type II diabetes risk in order to better understand the mechanisms which impact health and well-being.

Hourly Cost per Response: The estimated total annual burden of this information collection is 279,892.89 hours. The estimated total annual cost for this information collection is $1,588,630.99. The estimated total annual cost is calculated by multiplying the total number of respondent hours for adults by $11.05. The hourly rate of $11.05 was calculated using the average hourly minimum wage rate for households in the Housing Choice voucher program living in the 8 study sites.[3] Annualized cost estimates were not calculated for the child sample. The child sample eligible to participate in the study will be under the age of 18. Most, if not all, will be enrolled in school and working part-time at the most. Thus, we did not calculate an hourly wage for the child sample.

Respondents: Selected adults and children who have enrolled in the Demonstration and are either (1) offered comprehensive mobility-related services along with their voucher or (2) offered standard PHA services along with their voucher.

Estimated Number of Respondents: The baseline and follow-up assessments for the Home, Child, and the Obesity and Type II Diabetes Risk Assessments will be completed for an estimated 2,370 respondents. This consists of 570 heads of household participating in the Home Assessment and 900 parents or guardians and 900 children

[3] Hourly minimum wage rates were averaged across the eight study sites, which include Los Angeles, Louisiana, Minnesota, New York City, New York State, Ohio, Pennsylvania, and Tennessee.

participating in the Obesity and Type II Diabetes Risk Assessment. We estimate that the Child Assessment will be administered to 837 households that also participate in the Obesity and Type II Diabetes Risk Assessment, so they are already included in the estimated number of respondents above.

Frequency of Response: Twice (baseline and follow-up).

Average Hours per Response:

• The Home Assessment includes an advance letter (5 minutes or .08 hours), an email (1 minute or .02 hours), and a follow-up call from the research team (8 minutes or .13 hours). It also includes the consent (10 minutes or .17 hours), direct measurement (30 minutes or .5 hours), interviewer observations (10 minutes or .17 hours) and a brief survey (15 minutes or .25 hours) representing a total respondent burden of 1.32 hours. The burden table reflects the evaluation contractor's estimate that it may need to conduct initial outreach, via emails, letters, and phone calls, to up to 814 families in order to recruit 570 families to participate in the Home Assessment.

• The Child Assessment includes the consent (8 minutes or .13 hours), survey about child (asked of parent/guardian) and parent/guardian's presence during direct child assessment (a total of 45 minutes or .75 hours), and the direct child assessment (22 minutes or .37 hours for the child). This represents a total respondent burden of 75 minutes or 1.25 hours. Consent for the Child Assessment and the Obesity and Type II Diabetes Risk Assessment will be obtained at the same time, through the same instrument; we have apportioned the total time estimate for the combined instrument across the two assessments.

The Obesity and Type II Diabetes Risk Assessment includes an advance letter (5 minutes or .08 hours), an email (1 minute or .02 hours), and a follow-up call from the research team (8 minutes or .13 hours). It also includes the consent and enrollment (15 minutes or .25 hours); adult survey (60 minutes or 1 hour); anthropometric assessments for adults (10 minutes or 0.17 hours) and children (10 minutes or 0.17 hours and 10 minutes or .17 hours for the parent or guardian who must also be present); and blood spot sample of the adult (10 minutes or 0.17 hours). The Home observations/housing assessment of the home will take 15 minutes (.25 hours). For the subset of 400 adults and 400 children selected to wear an accelerometer, we estimate a total of 1 hour to put on and return the accelerometer. Returning the accelerometer will involve the participant placing the device in the self-addressed, postpaid return envelope that the interviewer provided and mailing it back to the study team. We have also included the full burden of participants wearing the accelerometer for 7 days for a total burden of 169 hours per participant in the accelerometer sub-group. We expect the blood pressure reading to take 15 minutes or .25 hours. For the sub-set of 75 adults that are interviewed as part of the semi-structured interviews, consent is expected to take 10 minutes (or .17 hours) and the interviews are expected to take 60–90 minutes, or 1–1.5 hours. Finally, we have included quarterly tracking emails/texts or calls between the baseline survey and the follow-up survey that remind participants to confirm or update their name, address, phone, and email. The tracking also allows them to provide the name, address and phone number of someone who will always know how to reach them. We estimate the burden to be 8 minutes or .13 hours for tracking emails/texts and 10 minutes or .17 hours for tracking calls. The burden table reflects the evaluation contractor's estimate that it may need to conduct initial outreach, via emails, letters, and phone calls, to up to 1,285 families in order to recruit 900 families to participate in the Obesity and Type II Diabetes Risk Assessment.

Respondents: Public.

ANNUALIZED BURDEN TABLE

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Home Assessment							
Advance Letter	814	2	1,628	0.08	130.24	$11.05	$1,439.15
Email Reminder	814	2	1,628	0.02	32.56	11.05	359.79
Follow-up Call Phone Script	814	2	1,628	0.13	211.64	11.05	2,338.62
Consent for Assessment	570	2	1,140	0.17	193.80	11.05	2,141.49
Direct Measurements	570	2	1,140	0.50	570.00	11.05	6,298.50
Interviewer Observations	570	2	1,140	0.17	193.80	11.05	2,141.49
Survey	570	2	1,140	0.25	285.00	11.05	3,149.25
Child Assessment							
Consent for Assessment	837	2	1,674	0.13	217.62	11.05	2,404.70
Survey about child (asked of parent/guardian) and parent/guardian's presence during direct child assessment	837	2	1,674	0.75	1,255.50	11.05	13,873.28
Direct Child Assessment	837	2	1,674	0.37	619.38	N/A	.....
The Obesity and Type II Diabetes Risk Assessment							
Advance Letter	1,285	2	2,570	0.08	205.60	11.05	2,271.88
Email Reminder	1,285	2	2,570	0.02	51.40	11.05	567.97
Follow-up Call Phone Script	1,285	2	2,570	0.13	334.10	11.05	3,691.81
Consent for Assessment	900	2	1,800	0.25	450.00	11.05	4,972.50
Adult Survey	900	2	1,800	1.00	1,800.00	11.05	19,890.00
Anthropometric assessments (adult)	900	2	1,800	0.17	306.00	11.05	3,381.30
Anthropometric assessments (child)	900	2	1,800	0.17	306.00	N/A	.....
Anthropometric assessments (child, but accounting for parent's time)	900	2	1,800	0.17	306.00	11.05	3,381.30
Blood Spot Samples (adult)	900	2	1,800	0.17	306.00	11.05	3,381.30
Home Observations/Housing Assessment	900	2	1,800	0.25	450.00	11.05	4,972.50
Accelerometers (adult)	400	2	800	169.00	135,200.00	11.05	1,493,960.00
Accelerometers (child)	400	2	800	169.00	135,200.00	N/A	.....
Blood Pressure Reading (adult)	900	2	1,800	0.25	450.00	11.05	4,972.50
Consent for Semi-Structured Interviews	75	1	75	0.17	12.75	11.05	140.89
Semi-Structured Interviews	75	1	75	1.50	112.50	11.05	1,243.13

ANNUALIZED BURDEN TABLE—Continued

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Tracking Emails/Texts	900	2	1,800	0.13	234.00	11.05	2,585.70
Tracking Calls	900	3	2,700	0.17	459.00	11.05	5,071.95
Totals	2,936		42,826		279,892.89		1,588,630.99

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. 2023–22847 Filed 10–16–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2023–0156; FXES11140800000–190–FF08EVEN00]

Draft Categorical Exclusion and Draft General Conservation Plan for Amphibians in Southern Santa Cruz County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft general conservation plan (GCP), as well as an associated draft categorical exclusion (CatEx), for development activities in Santa Cruz County, California. The Service developed the GCP in accordance with the Endangered Species Act to provide a streamlined mechanism for proponents engaged in activities associated with residential development and associated infrastructure, construction and maintenance on public lands, and habitat restoration, to meet statutory and regulatory requirements while promoting conservation of the California red-legged frog, California tiger salamander, and Santa Cruz long-toed salamander. The Service also prepared the draft CatEx in accordance with the National Environmental Policy Act to evaluate the potential effects to the natural and human environment resulting from issuing permits under the GCP. We invite comment on these documents from agencies, Tribes, and the public.

DATES: Written comments should be received on or before November 16, 2023.

ADDRESSES:

Obtaining Documents: The documents this notice announces, as well as any comments and other materials that we receive, will be available for public inspection online in Docket No. FWS–R8–ES–2023–0156 at *https://www.regulations.gov.*

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by any of the following methods:

- *Online: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R8–ES–2023–0156.
- *U.S. mail:* Public Comments Processing; Attn: Docket No. FWS–R8–ES–2023–0156; U.S. Fish and Wildlife Service; MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Chad Mitcham, Fish and Wildlife Biologist, by email at *chad_mitcham@fws.gov,* or by telephone at 805–644–1766. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft general conservation plan (GCP) and the associated draft categorical exclusion (CatEx), for development activities in Santa Cruz County. The draft GCP was developed by the Service in accordance with section 10(a)(2)(A) of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). The GCP meets the issuance criteria as required by section 10(a)(2)(B) of the Act for issuance of a section 10(a)(1)(B) incidental take permit (ITP). The Service developed the GCP to provide a streamlined mechanism for proponents engaged in activities associated with the construction and maintenance of residential dwellings and associated infrastructure, construction, and maintenance on public lands, such as roads, drainages, and parks, and habitat restoration, to meet statutory and regulatory requirements while promoting conservation of the California red-legged frog (*Rana draytonii*), California tiger salamander (*Ambystoma californiense*), and Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*). Permits issued under the GCP would authorize incidental take of the covered species for up to 5 years after each respective permit is issued. The GCP would authorize incidental take of the covered species, via permanent habitat loss, within 90 acres (ac) of the approximate 14,314-ac plan area in southern Santa Cruz County. The Service prepared the draft CatEx in accordance with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) to evaluate the potential effects to the natural and human environment resulting from issuing permits under the GCP. We invite comment on the GCP

and associated documents from agencies, Tribes, and the public.

Background

The Service listed the California red-legged frog as threatened on May 23, 1996 (61 FR 25813), the California tiger salamander as threatened on August 4, 2004 (69 FR 47212), and the Santa Cruz long-toed salamander as endangered on March 11, 1967 (32 FR 4001). Section 9 of the Act and its implementing regulations prohibit the take of fish or wildlife species listed as endangered or threatened. ''Take'' is defined under the Act to include the following activities: ''[T]o harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1532); however, under section 10(a)(1)(B) of the Act, we may issue permits to authorize incidental take of listed species. ''Incidental take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are, respectively, in the Code of Federal Regulations (CFR) at 50 CFR 17.32 and 17.22. Issuance of an incidental take permit also must not jeopardize the existence of federally listed fish, wildlife, or plant species. All species included in an incidental take permit would receive assurances under our ''No Surprises'' regulations (50 CFR 17.22(b)(5) and 17.32(b)(5)).

The proposed action is approval of the GCP and subsequent issuance of incidental take permits. The Service prepared the GCP to provide a more efficient and standardized mechanism for proponents engaged in activities associated with the construction and maintenance of residential dwellings and associated infrastructure, construction and maintenance on public lands such as roads, drainages, and parks, and habitat restoration on non-Federal lands. The GCP meets permit issuance criteria as required by section 10(a)(2)(B) of the Act and enables implementation of a programmatic permitting and conservation process to address a suite of proposed activities over a defined planning area. The proposed GCP would allow private individuals, local and State agencies, and other non-Federal entities to meet the statutory and regulatory requirements of the Act by applying for permits and complying with the requirements of the GCP, including all applicable avoidance, minimization, and mitigation actions.

Our Preliminary Determination Under the National Environmental Policy Act

The Service has made a preliminary determination that GCP issuance and the subsequent issuance of permits under the GCP is neither a major Federal action that will significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA), nor will it individually or cumulatively have more than a negligible effect on the species covered in the GCP. Therefore, the Service anticipates GCP issuance qualifies for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (40 CFR 1501.4), the Department of the Interior's (DOI) NEPA regulations (43 CFR 46), and the DOI's Departmental Manual (516 DM 8.5(C)(2)).

Public Comments

If you wish to comment on the GCP and associated documents, you may submit comments by any one of the methods in **ADDRESSES**.

Public Availability of Comments

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 view, we cannot guarantee that we will be able to do so.

Authority

The Service provides this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500–1508 and 43 CFR 46).

Stephen P. Henry,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. 2023–22808 Filed 10–16–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2023–0202; FXES11130800000–178–FF08EVEN00]

Application for Renewal of Incidental Take Permit; Interim Programmatic Habitat Conservation Plan for the Mount Hermon June Beetle and Ben Lomond Spineflower, Santa Cruz County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit renewal application; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce receipt of an application from the County of Santa Cruz (applicant) for renewal of an existing incidental take permit under the Endangered Species Act. The applicant has requested a renewal that will extend permit duration by 20 years from the date the permit is reissued. The permit would continue to authorize take of the federally endangered Mount Hermon June beetle that is incidental to otherwise lawful activities associated with the approved Interim Programmatic Habitat Conservation Plan for the Endangered Mount Hermon June Beetle and Ben Lomond Spineflower. We invite comment on the application and associated documents from agencies, Tribes, and the public.

DATES: Written comments should be received on or before November 16, 2023.

ADDRESSES:

Obtaining Documents: The documents this notice announces, as well as any comments and other materials that we receive, will be available for public inspection online in Docket No. FWS–R8–ES–2023–0202 at *https://www.regulations.gov.*

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by any of the following methods:

- *Online: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R8–ES–2023–0202.
- *U.S. mail:* Public Comments Processing; Attn: Docket No. FWS–R8–ES–2023–0202; U.S. Fish and Wildlife Service; MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Chad Mitcham, Fish and Wildlife Biologist, by email at *chad_mitcham@fws.gov,* or by telephone at 805–644–

1766. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce receipt of an application from the County of Santa Cruz (applicant) for renewal by 20 years of an existing incidental take permit under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. *et seq.*). If approved for renewal, the permit would continue to authorize take of the federally endangered Mount Hermon June beetle (*Polyphylla barbata*) that is incidental to otherwise lawful activities associated with the approved Interim Programmatic Habitat Conservation Plan for the Endangered Mount Hermon June Beetle and Ben Lomond Spineflower (HCP). The applicant has agreed to update mitigation measure 5.2.2.2 in the HCP to ensure that impacts to the species' habitat are commensurately offset through the protection of habitat at a 3 to 1 ratio (*i.e.,* habitat protected to habitat disturbed). The applicant also agreed to follow all other existing HCP conditions. If the permit is renewed, no additional take above the original authorized limit of 139 acres of habitat, using habitat as a surrogate for take, will be authorized. We invite comment on the application, HCP, and associated documents from the public and local, State, Tribe, and Federal agencies.

Background

The Mount Hermon June beetle was listed by the Service as endangered on January 24, 1997 (62 FR 3616). The Ben Lomond spineflower (*Chorizanthe pungens* var. *hartwegiana*) was listed by the Service as endangered on February 4, 1994 (59 FR 5499). Section 9 of the Act and its implementing regulations prohibit the ''take'' of fish or wildlife species listed as endangered or threatened. ''Take'' is defined under the Act to include the following activities: ''[T]o harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1532); however, under section 10(a)(1)(B) of the Act, we may issue permits to authorize incidental take of listed wildlife species. ''Incidental take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are, respectively, in the Code of Federal Regulations (CFR) at 50 CFR 17.32 and 17.22. Under the Act, protections for federally listed plants differ from the protections afforded to federally listed animals. Take of listed plant species is not prohibited under the Act and cannot be authorized under a section 10 permit. However, listed plant species may be included on an incidental take permit in recognition of the conservation benefit provided to them under an HCP. Issuance of an incidental take permit also must not jeopardize the existence of federally listed fish, wildlife, or plant species. All species included in the incidental take permit would receive assurances under our ''No Surprises'' regulations (50 CFR 17.22(b)(5) and 17.32(b)(5)).

The applicant has applied for renewal of their permit for incidental take of the endangered Mount Hermon June beetle. The potential taking would occur by activities associated with the construction of certain eligible small development projects in densely developed residential neighborhoods (as defined in the HCP) that support suitable habitat for the covered species. The 10 project units within the HCP boundary were identified within the communities of Ben Lomond, Felton, Mount Hermon, and Scotts Valley in Santa Cruz County, California. Incidental take permits were first issued for the HCP on October 27, 2011 (76 FR 17664; March 30, 2011), and renewed on June 30, 2018 (83 FR 17837; April 24, 2018).

Our Preliminary Determination Under the National Environmental Policy Act

Based on a preliminary review, the Service anticipates the original National Environmental Policy Act (NEPA) review for the HCP permit in 2011 remains valid and accurate. That analysis concluded that issuance of the permit is not a major Federal action that will significantly affect the quality of the human environment within the meaning of section 102(2)(C) of NEPA. Therefore, the Service anticipates the permit renewal is consistent with our original analysis pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations, the Department of the Interior's (DOI) NEPA regulations (43 CFR 46), and the DOI's Departmental Manual (516 DM 8.5(C)(2)).

Public Comments

If you wish to comment on the permit application, HCP, and associated documents, you may submit comments by any one of the methods in **ADDRESSES**.

Public Availability of Comments

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 view, we cannot guarantee that we will be able to do so.

Authority

The Service provides this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500–1508 and 43 CFR 46).

Stephen P. Henry,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. 2023–22807 Filed 10–16–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_AK_FRN_MO4500175759]

Filing of Plats of Survey: Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of lands described in this notice are scheduled to be officially filed in the Bureau of Land Management (BLM), Alaska State Office, Anchorage, Alaska. The surveys, which were executed at the request of the Bureau of Indian Affairs and BLM, are necessary for the management of these lands.

DATES: The BLM must receive protests by November 16, 2023.

ADDRESSES: You may buy a copy of the plats from the BLM Alaska Public Information Center, 222 W 7th Avenue, Mailstop 13, Anchorage, AK 99513. Please use this address when filing written protests. You may also view the plats at the BLM Alaska Public Information Center, Fitzgerald Federal Building, 222 W 7th Avenue, Anchorage, Alaska, at no cost.

FOR FURTHER INFORMATION CONTACT: Thomas B. O'Toole, Chief, Branch of

Cadastral Survey, Alaska State Office, Bureau of Land Management, 222 W 7th Avenue, Anchorage, AK 99513; 907–271–4231; *totoole@blm.gov.* People who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the BLM during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lands surveyed are:

Copper River Meridian, Alaska

T. 4 S., R. 1 E., accepted September 14, 2023.
T. 5 S., R. 1 E., accepted September 14, 2023.
T. 4 S., R. 2 E., accepted September 14, 2023.
T. 5 S., R. 2 E., accepted September 14, 2023.
T. 6 S., R. 2 E., accepted September 14, 2023.
T. 4 S., R. 3 E., accepted September 14, 2023.
T. 5 S., R. 3 E., accepted September 14, 2023.
T. 7 S., R. 3 E., accepted September 14, 2023.
T. 8 S., R. 3 E., accepted September 14, 2023.
T. 4 S., R. 4 E., accepted September 14, 2023.
T. 5 S., R. 4 E., accepted September 14, 2023.
T. 25 N., R. 13 E., accepted August 16, 2023.
T. 2 S., R. 1 W., accepted September 14, 2023.
T. 5 S., R. 1 W., accepted September 14, 2023.
T. 10 N., R. 1 W., accepted September 28, 2020.
T. 11 N., R. 1 W., accepted May 15, 2020.
T. 2 S., R. 2 W., accepted September 14, 2023.
T. 3 S., R. 2 W., accepted September 14, 2023.
T. 5 S., R. 2 W., accepted September 14, 2023.
T. 6 S., R. 2 W., accepted September 14, 2023.
T. 2 S., R. 3 W., accepted September 14, 2023.
T. 3 S., R. 3 W., accepted September 14, 2023.
T. 4 S., R. 3 W., accepted September 14, 2023.
T. 5 S., R. 3 W., accepted September 14, 2023.
T. 2 N., R. 4 W., accepted September 14, 2023.
T. 1 S., R. 4 W., accepted September 14, 2023.
T. 2 S., R. 4 W., accepted September 14, 2023.
T. 4 S., R. 4 W., accepted September 14, 2023.
T. 5 S., R. 4 W., accepted September 14, 2023.
T. 6 S., R. 4 W., accepted September 14, 2023.
T. 3 S., R. 5 W., accepted September 14, 2023.
T. 4 S., R. 5 W., accepted September 14, 2023.
T. 5 S., R. 5 W., accepted September 14, 2023.
T. 2 S., R. 6 W., accepted September 14, 2023.
T. 3 S., R. 6 W., accepted September 14, 2023.
T. 4 S., R. 6 W., accepted September 14, 2023.
T. 5 S., R. 6 W., accepted September 14, 2023.
T. 6 S., R. 6 W., accepted September 14, 2023.
U.S. Survey No. 14536, accepted August 16, 2023, situated in T. 25 N., R. 13 E.
U.S. Survey No. 14538, accepted August 16, 2023, situated in T. 25 N., R. 13 E.
U.S. Survey No. 14557, accepted September 1, 2023, situated in T. 25 N., R. 13 E.
U.S. Survey No. 14560, accepted August 16, 2023, situated in T. 25 N., R. 13 E.
U.S. Survey No. 14561, accepted August 16, 2023, situated in T. 25 N., R. 13 E.
U.S. Survey No. 14600, accepted August 15, 2023, situated in T. 25 N., R. 13 E.
U.S. Survey No. 14601, accepted September 1, 2023, situated in T. 19 S., R. 17 E.
U.S. Survey No. 14604, accepted September 1, 2023, situated in T. 20 S., R. 19 E.
U.S. Survey No. 14606, accepted September 1, 2023, situated in T. 18 S., R. 18 E.
U.S. Survey No. 14607, accepted September 6, 2023, situated in T. 15 N., R. 12 E.
U.S. Survey No. 14619, accepted August 18, 2023, situated in T. 15 N., R. 12 E.

Fairbanks Meridian, Alaska

T. 1 S., R. 4 E., accepted June 29, 2023.
U.S. Survey No. 14608, accepted August 14, 2023, situated in T. 3 S., R. 29 E.

Seward Meridian, Alaska

U.S. Survey No. 14638, accepted September 22, 2023, situated in T. 12 S., R. 43 W.

A person or party who wishes to protest one or more plats of survey identified above must file a written notice of protest with the State Director for the BLM in Alaska. The protest may be filed by mailing to BLM State Director, Alaska State Office, Bureau of Land Management, 222 W 7th Avenue, Anchorage, AK 99513 or by delivering it in person to BLM Alaska Public Information Center, Fitzgerald Federal Building, 222 W 7th Avenue, Anchorage, Alaska. The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. You must file the notice of protest before the scheduled date of official filing for the plat(s) of survey being protested. The BLM will not consider any notice of protest filed after the scheduled date of official filing. A notice of protest is considered filed on the date it is received by the State Director for the BLM in Alaska during regular business hours; if received after regular business hours, a notice of protest will be considered filed the next business day. A written statement of reasons in support of a protest, if not filed with the notice of protest, must be filed with the State Director for the BLM in Alaska within 30 calendar days after the notice of protest is filed.

If a notice of protest against a plat of survey is received prior to the scheduled date of official filing, the official filing of the plat of survey identified in the notice of protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the dismissal or resolution of all protests of the plat.

Before including your address, phone number, email address, or other personally identifiable information in a notice of protest or statement of reasons, you should be aware that the documents you submit, including your personally identifiable information, may be made publicly available in their entirety at any time. While you can ask the BLM to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. chapter 3.

Thomas B. O'Toole,

Chief Cadastral Surveyor, Alaska.

[FR Doc. 2023–22901 Filed 10–16–23; 8:45 am]

BILLING CODE 4331–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_ID_FRN_MO4500170927; IDI–039687]

Notice of Proposed Withdrawal and Opportunity for Public Meeting for Silver City National Historic Site, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: On behalf of the Bureau of Land Management (BLM) and subject to valid existing rights, the Secretary of the Interior proposes to withdraw 311.09 acres of public land from location and entry under the United States mining laws, but not from leasing under the mineral and geothermal leasing laws or disposal under the Mineral Materials Act of 1947, for 50 years to protect the historic and recreational values associated with the Silver City National Historic Site, Idaho. Publication of this notice segregates the lands for up to two years from location and entry under the United States mining laws, subject to valid existing rights, but not from leasing under the mineral and geothermal leasing laws or disposal under the Mineral Materials Act of 1947, while the application is being processed. This notice initiates a 90-day public comment period and announces the opportunity to request a public meeting on the proposed withdrawal.

DATES: Comments and requests for a public meeting must be received by January 16, 2024.

ADDRESSES: All comments and meeting requests should be sent to the BLM Idaho State Office, Attn: ID–933 Realty/Silver City Withdrawal, 1387 S Vinnell Way, Boise, ID 83709, or by email to *BLM_ID_LLID933000_Withdrawal@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Christine Sloand, Realty Specialist, BLM Idaho State Office, telephone: (208) 373–3897, or *csloand@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. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM has filed a petition/application requesting the Secretary of the Interior to withdraw the following described public lands from location and entry under the United States mining laws, subject to valid existing rights, but not from leasing under the mineral and geothermal leasing laws or disposal under the Mineral Materials Act of 1947, for a period of 50 years.

Boise Meridian, Idaho

T. 4 S., R. 3 W.,
Sec. 31, lots 4 and 5, W½NE¼SE¼ and E½NW¼SE¼;
T. 5 S., R. 3 W.,
Sec. 6, lots 11, 12, 68, 78, 99, 100, and 106 thru 110.
The areas described aggregate 311.09 acres in Owyhee County.

The Secretary of the Interior has approved the petition to file a withdrawal application. The Secretary's approval constitutes her proposal to withdraw and segregate the subject lands (43 CFR 2310.1–3(e)).

The use of a right-of-way, interagency agreement or cooperative agreement, or surface management under 43 CFR subpart 3809 regulations would not adequately constrain non-discretionary uses and would not provide adequate protection for historic and recreational values on these lands.

Water rights will not be needed to fulfill the purpose of the proposed withdrawal.

There are no suitable alternative sites, as the described public lands were specifically selected since they occur within and immediately around the Silver City National Historic Site boundary.

For a period until January 16, 2024, persons who wish to submit comments, suggestions, or objections related to the withdrawal application may present their views in writing to the Bureau of Land Management Idaho State Office at the address listed above. Comments will be available for public review by appointment at the BLM Idaho State Office during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

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 personally identifying information—may be made publicly available at any time. You may ask the BLM in your comment to withhold your personal identifying information from public review, but we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives of officials of organizations or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that the opportunity for a public meeting is afforded in connection with the withdrawal application. All interested parties who desire a public meeting for the purpose of being heard on the withdrawal application must submit a written request to the Bureau of Land Management Idaho State Office at the address indicated above by January 16, 2024. If the Authorized Officer determines that the BLM will hold a public meeting, the BLM will publish a notice of the time and place in the **Federal Register** and a local newspaper at least 30 days before the scheduled date of the meeting.

For a period until October 17, 2025, subject to valid existing rights, the public lands described in this notice will be segregated from location and entry under the United States mining laws, but not from leasing under the mineral and geothermal leasing laws, or disposal under the Mineral Materials Act of 1947, while the withdrawal application is being processed, unless the application is denied, canceled, or the withdrawal is approved prior to that date.

The public lands described in this notice would remain open to such forms of disposition as may be allowed by law on the public lands. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature and which would not significantly impact the values to be protected by the requested withdrawal may be allowed with the approval of the authorized officer during the temporary segregation period.

This withdrawal application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

(Authority: 43 U.S.C. 1714)

Karen Kelleher,

Idaho State Director.

[FR Doc. 2023–22841 Filed 10–16–23; 8:45 am]

BILLING CODE 4331–19–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1342]

Certain Semiconductor Devices Having Layered Dummy Fill, Electronic Devices, and Components Thereof; Notice of the Commission's Determination Not To Review an Initial Determination Terminating the Investigation Based on Withdrawal of the Complaint; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding chief administrative law judge's (''CALJ'') initial determination (''ID'') (Order No. 25) terminating the investigation in its entirety based on Complainant's withdrawal of the complaint.

FOR FURTHER INFORMATION CONTACT: Edward S. Jou, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3316. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 29, 2022, based on a complaint filed by Bell Semiconductor, LLC of Bethlehem, Pennsylvania (the ''Complainant''). 87 FR 73330–31 (Nov. 29, 2022). The complaint, as

supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor devices having layered dummy fill, electronic devices, and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,396,760. The notice of investigation named fifteen respondents. *Id.* The Office of Unfair Import Investigations (''OUII'') was also named as a party to the investigation. *Id.*

Twelve of the named respondents have been terminated from the investigation. Order No. 12 (Jan. 11, 2023), *unreviewed by* Comm'n Notice (Feb. 8, 2023), Order No. 20 (Mar. 14, 2023), *unreviewed by* Comm'n Notice (Apr. 3, 2023), and Order No. 21 (Mar. 28, 2023) *unreviewed by* Comm'n Notice (Apr. 21, 2023). The three remaining respondents are Omnivision Technologies, Inc., Skyworks Solutions, Inc., and Arlo Technologies, Inc. (the ''Respondents'').

On May 8, 2023, Complainant filed a motion to terminate the investigation based on the withdrawal of its allegations against the three remaining Respondents, pursuant to an agreement with non-party Siemens Industry Software, Inc. (''Siemens''). On June 9, 2023, the presiding CALJ issued Order No. 23 granting the motion to terminate the investigation.

On July 11, 2023, the Commission determined to review Order No. 23, and on review, vacated the termination of the investigation and remanded the investigation for further proceedings, because Complainant did not comply with Commission Rule 210.21(a)(1), which requires filing a copy of ''any agreements concerning the subject matter of the investigation.'' 19 CFR 210.21(a)(1).

On September 1, 2023, Complainant filed a renewed motion to terminate the investigation based on the withdrawal of its allegations against the three remaining Respondents, attaching a copy of its agreement with non-party Siemens. On September 13, 2023, OUII filed a response in support of the renewed motion. No other responses were filed.

On September 14, 2023, the presiding CALJ issued the subject ID granting the renewed motion to terminate the investigation and finding that Complainant complied with the requirements of Commission Rule 210.21(a)(1). No petitions for review of the ID were filed.

The Commission has determined not to review the subject ID. The investigation is hereby terminated in its entirety.

The Commission vote for this determination took place on October 11, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: October 12, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–22872 Filed 10–16–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1357]

Certain Electronic Anti-Theft Shopping Cart Wheels, Components Thereof and Systems Containing the Same; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation Based on Settlement; Termination of the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 13) of the presiding Administrative Law Judge (''ALJ'') terminating the investigation in its entirety based on settlement. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–4716. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On April 11, 2023, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based on a complaint filed by Gatekeeper Systems, Inc. of Foothill Ranch, California (''Complainant''). *See* 88 FR 21711–12 (Apr. 11, 2023). The complaint alleges a violation of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic anti-theft shopping cart wheels, components thereof, and systems containing the same by reason of the infringement of certain claims of U.S. Patent Nos. 8,463,540; 9,091,551; 9,637,151; 11,230,313; and 11,358,621. *See id.* The notice of investigation names the following respondents: Rocateq International B.V. of Barendrecht, The Netherlands; Rocateq USA, LLC of San Fernando, California; and Zhuhai Rocateq Technology Company Ltd. of Zhuhai, China (collectively, ''Respondents''). *See id.* The Office of Unfair Import Investigations is not a party to the investigation. *See id.*

On September 15, 2023, Complainant and Respondents jointly moved to terminate the investigation in its entirety based on settlement.

On September 18, 2023, the ALJ issued the subject ID (Order No. 13) granting the motion. The ID finds that the motion complies with Commission Rules 210.21(a) and (b), 19 CFR 210.21(a), (b). *See* ID at 2. Specifically, the ID notes that the joint motion includes confidential and public copies of the settlement agreement. *See id.* In addition, the motion states that ''there are no other agreements, written or oral, express or implied, between [the parties] concerning the subject matter of this Investigation.'' *See id.* Furthermore, in accordance with Commission Rule 210.50(b)(2), 19 CFR 210.50(b)(2), the ID finds no adverse impact on the public interest. *See id.* Rather, the ID notes that ''the public interest generally favors settlement to avoid needless litigation and to conserve public resources.'' *Id.*

No petition for review of the subject ID was filed.

The Commission has determined not to review the subject ID. The investigation is terminated.

The Commission's vote for this determination took place on October 12, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of

Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: October 12, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–22891 Filed 10–16–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1265 (Enforcement Proceeding)]

Certain Fitness Devices, Streaming Components Thereof, and Systems Containing Same; Notice of Institution of an Enforcement Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has instituted an enforcement proceeding relating to the remedial orders issued on March 8, 2023, in the above-referenced investigation.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the original investigation on May 19, 2021, based on a complaint filed on behalf of DISH DBS Corporation of Englewood, Colorado; DISH Technologies L.L.C., of Englewood, Colorado; and Sling TV L.L.C., of Englewood, Colorado (collectively, ''DISH''). 86 FR 27106–07 (May 19, 2021). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain fitness devices, streaming components thereof, and systems containing same by reason of infringement of certain claims of U.S. Patent Nos. 9,407,564 (''the '564 patent''); 10,951,680 (''the '680 patent''); 10,469,554 (''the '554 patent''); 10,469,555 (''the '555 patent''); and 10,757,156 (''the '156 patent''). *Id.* at 27106. The notice of investigation named, among others, ICON Health & Fitness, Inc.; FreeMotion Fitness, Inc.; and NordicTrack, Inc., all of Logan, Utah (collectively, ''iFIT Respondents'') as respondents. *Id.* The Commission's Office of Unfair Import Investigations (''OUII'') also was named as a party in this investigation. *Id.*

Prior to the issuance of the final initial determination (''ID'') in the original investigation, the notice of investigation was amended to change the name of ICON Health & Fitness, Inc. to iFIT Inc. Order No. 14 (Nov. 4, 2021), *unreviewed by* Comm'n Notice (Dec. 6, 2021), 86 FR 70532 (Dec. 10, 2021). The investigation was also terminated in part as to all asserted claims of the '680 patent and certain claims of the other asserted patents. Order No. 15 (Nov. 19, 2021), *unreviewed by* Comm'n Notice (Dec. 20, 2021); Order No. 21 (Mar. 3, 2022), *unreviewed by* Comm'n Notice (Mar. 23, 2022).

On September 9, 2022, the Chief Administrative Law Judge (''CALJ'') issued the final ID in the original investigation, which finds that the iFIT Respondents, among others, violated section 337. On November 18, 2022, the Commission determined to review the final ID in part. *See* Comm'n Notice (Nov. 18, 2022), 87 FR 72510, 72510–12 (Nov. 25, 2022).

On March 8, 2023, the Commission affirmed with certain modifications the final ID's findings that there was a violation of section 337 by the iFIT Respondents as to claims 16, 17, and 20 of the '554 patent; claims 10, 11, 14, and 15 of the '555 patent; and claims 1 and 4 of the '156 patent, and reversed the final ID's finding of a violation as to the '564 patent. *See* Comm'n Notice (Mar. 8, 2023); Comm'n Op. (Mar. 23, 2023) (Public Version). The Commission determined that the appropriate form of relief was a limited exclusion order (''LEO'') and cease and desist orders (''CDOs'') against the iFIT Respondents, among others. Comm'n Notice (Mar. 8, 2023), 88 FR 15736–38 (Mar. 14, 2023). On May 5, 2023, the Commission modified the remedial orders. Comm'n Notice (May 5, 2023), 88 FR 30158–160 (May 10, 2023).

On September 11, 2023, DISH filed a complaint requesting that the Commission institute an enforcement proceeding under Commission Rule 210.75, 19 CFR 210.75, to investigate alleged violations of the LEO and CDOs by the iFIT Respondents as to claims 16, 17, and 20 of the '554 patent and claims 10, 11, 14, and 15 of the '555 patent.

Having examined the enforcement complaint and the supporting documents, the Commission has determined to institute an enforcement proceeding, pursuant to Commission Rule 210.75(a), 19 CFR 210.75(a), to determine whether a violation of the LEO and CDOs issued on March 8, 2023, in the original investigation has occurred and to determine what, if any, enforcement measures are appropriate. The named respondents are the iFIT Respondents. OUII is also named as a party.

The Commission vote for this determination took place on October 11, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Dated: October 11, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–22793 Filed 10–16–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint *Certain Mobile Phones, Components Thereof, and Products Containing Same, DN 3698;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.*

For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Telefonaktiebolaget LM Ericsson on October 11, 2023. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain mobile phones, components thereof, and products containing same. The complaint names as respondents: Motorola Mobility LLC of Chicago, IL; Lenovo (United States) Inc. of Morrisville, NC; Lenovo Group Limited of Hong Kong; and Motorola (Wuhan) Mobility Technologies Communication Co., LTD. of China. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3698'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: October 12, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–22894 Filed 10–16–23; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

[OMB Number 1140–0080]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; Notification of Change of Mailing or Premise Address

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-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.

DATES: Comments are encouraged and will be accepted for 60 days until December 18, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, contact: Shawn Stevens, FELC, either by mail at 244 Needy Road, Martinsburg, WV 25405, by email at *Shawnstevens@atf.gov,* or telephone at 304–616–4421.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: During the term of a license or permit, a licensee or permittee may move his business or operations to a new address where he intends to regularly carry on his business or operations, without procuring a new license or permit. However, in every case, the licensee or permittee shall notify the Chief, Federal Explosives Licensing Center of the business or operations address change.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *The Title of the Form/Collection:* Notification of Change of Mailing or Premise Address.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None.

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 the obligation to respond: Affected Public:* Private Sector—Business or other for-profit institutions, individuals or households.

The obligation to respond is: Mandatory under the provisions of Title 18 U.S.C, Section 842 (f) and 27 CFR 555.54.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 1,000 respondents will utilize this information collection annually, and it will take each respondent approximately 10 minutes to complete their responses.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 170 hours, which is equal to 1,000 (total respondents) * 1 (# of response per respondent) * 0.17 (10 minutes).

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* $0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response	Total annual burden (hours)
Record Keeping: (Private Sector/Individuals or Households).	1,000	1/annually	1,000	.17	170

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: October 11, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–22822 Filed 10–16–23; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0329]

Agency Information Collection Activities; Proposed eCollection eComments Requested; OJP Solicitation Template

AGENCY: Office of Justice Programs, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Office of Justice Programs (OJP), 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 August 8, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until November 16, 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: Jennifer Tyson, (202) 598–0386, Office of Audit, Assessment, and Management, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW, Washington, DC 20531 or *Jennifer.Tyson@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should

address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB Control Number 1121–0329. 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:* OJP Solicitation Template.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No form number available. Office of Justice Programs, Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* The primary respondents are state agencies, tribal governments, local governments, colleges and universities, non-profit organizations, for-profit organizations, and faith-based organizations. The purpose of the solicitation template is to provide a framework to develop program-specific announcements soliciting applications for funding. A program solicitation outlines the specifics of the funding program; describes requirements for eligibility; instructs an applicant on the necessary components of an application under a specific program (*e.g.,* project activities, project abstract, project timeline, proposed budget, etc.); outlines program evaluation and performance measures; explains selection criteria and the review process; and provides registration dates, deadlines, and instructions on how to apply within the designated application systems. The approved solicitation template collection also includes the OJP Budget Detail Worksheet; the Coordinated Tribal Assistance Solicitation (CTAS) Tribal Community and Justice Profile, Budget Detail Worksheet and Demographic Form; and the Financial Management and System of Internal Controls Questionnaire (FCQ). The solicitation template collection was previously streamlined to move static instructions and guidance that do not frequently change from year to year to a Grant Application Resource Guide web page. The result is a more concise, user-friendly solicitation document that draws closer attention to the program-specific details and requirements in order to lessen confusion for the applicant. Additionally, it enables the agency to revise static guidance on the web page as necessary, reducing the need to re-issue program solicitations already released to the public.

5. *Obligation to Respond:* Required to obtain or retain a benefit.

6. *Total Estimated Number of Respondents:* 10,000.

7. *Estimated Time per Respondent:* 32 hours.

8. *Frequency:* Annually.

9. *Total Estimated Annual Time Burden:* 320,000 hours

10. *Total Estimated Annual Other Costs Burden:* Annual cost to the respondents is based on the number of hours involved in preparing and submitting a complete application package. Mandatory requirements for an application under the OJP and CTAS Standard Solicitation Template include a program narrative; budget details and narrative, via the OJP standard BDW; Applicant Disclosure of Duplication in Cost Items; Applicant Disclosure and Justification—DOJ High Risk Grantees; and the FCQ. With the exception of the Tribal Narrative Profile and added Demographic form, the mandatory requirements for an application under the CTAS Solicitation Template are the same as those for OJP. Optional requirements can be made mandatory depending on the type of program to include, but not limited to: documentation related to Administration priority areas of consideration (*e.g.,* Advancing Racial Equity and Support for Underserved Communities Through the Federal Government), project abstract, indirect cost rate agreement, tribal authorizing resolution, timelines, logic models, memoranda of understanding, letters of support, resumes, and research and evaluation independence and integrity.

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: October 11, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–22819 Filed 10–16–23; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF LABOR

[Agency Docket Number DOL–2023–0008]

Request for Comments for Dominican Republic-Central America-United States Free Trade Agreement (''CAFTA–DR'') Report

AGENCY: The Bureau of International Labor Affairs, United States Department of Labor.

ACTION: Notice; request for information and invitation to comment.

SUMMARY: This notice is a request for comments from the public to assist the Secretary of Labor in preparing a report on labor capacity-building efforts under Chapter 16 (''the Labor Chapter'') and Annex 16.5 of the Dominican Republic-Central America-United States Free Trade Agreement (''CAFTA–DR''). Comments are also welcomed on efforts made by the CAFTA–DR countries to implement the labor obligations under the Labor Chapter and the recommendations contained in a paper entitled ''The Labor Dimension in Central America and the Dominican Republic—Building on Progress: Strengthening Compliance and Enhancing Capacity'' (the ''White

Paper''). This report is required under the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA–DR Implementation Act). The reporting function and the responsibility for soliciting public comments required under this Act were assigned to the Secretary of Labor in consultation with the United States Trade Representative (USTR). The upcoming report will consolidate reporting periods to cover February 29, 2020, through October 31, 2023. As this is the final iteration of this report, DOL is also accepting comments on the implementation of labor obligations in all six countries under the Labor Chapter of CAFTA–DR since the White Paper was initially published in April 2005.

DATES: Written comments may be provided in English or Spanish and are due no later than 5 p.m. (ET) November 16, 2023.

ADDRESSES: *Submit written comments with the subject line 'CAFTA–DR Labor Report' to Sarah Casson at the Division of Monitoring and Enforcement, Office of Trade and Labor Affairs, Bureau of International Labor Affairs, DOL by email to ILAB-Outreach@DOL.gov.*

508 Compliance: Pursuant to section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), as amended. Section 508 became enforceable on June 21, 2001, and the Revised 508 standards issued by the United States Access Board (36 CFR part 1194), January 2018 require that Information and Communication Technology (ICT) procured, developed, maintained, and used by Federal departments and agencies is accessible to and usable by Federal employees and members of the public including people with disabilities. All documents received in electronic format must be accessible using assistive technologies such as a screen reader, *e.g.,* Job Aid with Speech (JAWS), NonVisual Desktop Access (NVDA), ZoomText, to name a few. The product should also be navigable using other means such as a keyboard or voice commands. Accessible document formats are either Microsoft Word or equivalent and Portable Document Format with OCR.

The Department of Labor requests that your submissions through the portal comply with our DOL Policies as well as the 508 Standards as referenced above.

FOR FURTHER INFORMATION CONTACT: Sarah Casson, Advisor, Office of Trade and Labor Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW, Room S–5006, Washington, DC 20210. Email: *ILAB-Outreach@DOL.gov,* Telephone: 202–693–2960.

SUPPLEMENTARY INFORMATION:

1. Background Information

During the legislative approval process for the CAFTA–DR, the Administration and the Congress reached an understanding on the need to support labor capacity-building efforts linked to recommendations identified in the ''White Paper'' of the Working Group of the Vice Ministers Responsible for Trade and Labor in the countries of Central America and the Dominican Republic. CAFTA–DR-specific trade capacity-building funds were appropriated through fiscal year 2010, and subsequently the Bureau of International Labor Affairs used its own appropriation to support technical assistance projects in CAFTA–DR partner countries through fiscal year 2023. For more information, see the full text of the CAFTA–DR at *https://ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta/final-text* and the ''White Paper'' at *http://www.sice.oas.org/labor/white%20paper_e.pdf.*

Under section 403(a) of the CAFTA–DR Implementation Act, 19 U.S.C. 4111(a), the President must report biennially to the Congress on the progress made by the CAFTA–DR countries in implementing the labor obligations and the labor capacity-building provisions found in the Labor Chapter and in Annex 16.5, and in implementing the recommendations contained in the ''White Paper.'' Section 403(a)(4) requires that the President establish a mechanism to solicit public comments on the matters described in section 403(a)(3)(D) of the CAFTA–DR Implementation Act, 19 U.S.C. 4111(a)(4) (listed below in 2).

By Proclamation, the President delegated the reporting function and the responsibility for soliciting public comments under section 403(a) of the CAFTA–DR Implementation Act, 19 U.S.C. 4111(a), to the Secretary of Labor, in consultation with the USTR (Proclamation No. 8272, 73 FR 38,297 (June 30, 2008)). This notice serves to request public comments as required by this section.

2. The Department of Labor Is Seeking Comments on the Following Topics as Required Under Section 403(a)(3)(D) of the CAFTA–DR Implementation Act

a. Capacity-building efforts by the United States government envisaged by Article 16.5 of the CAFTA–DR Labor Chapter and Annex 16.5;

b. Efforts by the United States government to facilitate full implementation of the ''White Paper'' recommendations and other matters related to the CAFTA–DR Labor Chapter; and

c. Efforts made by the CAFTA–DR countries to comply with Article 16.5 of the Labor Chapter and Annex 16.5 and to fully implement the ''White Paper'' recommendations, including progress made by the CAFTA–DR countries in affording to workers internationally recognized worker rights through improved capacity.

Authority: 22 U.S.C. 7112(b)(2)(C) & (D) and 19 U.S.C. 2464; Executive Order 13126.

Signed at Washington, DC, this 11th day of October, 2023.

Thea Lee,

Deputy Undersecretary for International Affairs.

[FR Doc. 2023–22899 Filed 10–16–23; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Certification of Funeral Expenses Under the Longshore and Harbor Workers' Compensation Act

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Workers' Compensation Programs (OWCP)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before November 16, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will

have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Michelle Neary by telephone at 202–693–6312, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Form LS–265 is used to report funeral expenses payable under the Longshore and Harbor Workers' Compensation Act. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 11, 2023 (88 FR 30346).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OWCP.

Title of Collection: Certification of Funeral Expenses under the Longshore and Harbor Workers' Compensation Act.

OMB Control Number: 1240–0040.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 75.

Total Estimated Number of Responses: 75.

Total Estimated Annual Time Burden: 19 hours.

Total Estimated Annual Other Costs Burden: $26.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michelle Neary,

Senior PRA Analyst.

[FR Doc. 2023–22831 Filed 10–16–23; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Qualification/Certification Program Request for MSHA Individual Identification Number (MIIN)

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Mine Safety and Health Administration (MSHA)-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 16, 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: Michael Howell by telephone at 202–693–6782, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: MSHA issues certifications, qualifications and approvals to the nation's miners to conduct specific work within the mines. Miners requiring qualification or certification from MSHA will register for an ''MSHA Individual Identification Number'' (MIIN). MSHA uses this unique number in place of individual SSNs for all MSHA collections. The MIIN identifier fulfills Executive Order 13402, Strengthening Federal Efforts Against Identity Theft, which requires Federal agencies to better secure government held data. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 31, 2023 (88 FR 34896).

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.

Agency: DOL–MSHA.

Title of Collection: Qualification/Certification Program Request for MSHA Individual Identification Number (MIIN).

OMB Control Number: 1219–0143.

Affected Public: Businesses or other for-profits.

Number of Respondents: 6,000.

Frequency: On occasion.

Number of Responses: 6,000.

Annual Burden Hours: 500 hours.

Total Estimated Annual Other Costs Burden: $72.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michael Howell,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2023–22834 Filed 10–16–23; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Registration Requirements To Serve as a Pooled Plan Provider to Pooled Employer Plans

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employee Benefits Security Administration (EBS)-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 16, 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: Michael Howell by telephone at 202–693–6782, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Setting Every Community Up for Retirement Enhancement Act of 2019 (the SECURE Act) was designed to improve retirement coverage as well as the ability of individuals to manage important retirement-related risks. Specifically, the Secure Act requires Section 101 of the SECURE Act requires a ''pooled plan provider'' to register with the Labor Department and the Treasury Department before beginning operations as a pooled plan provider. Specifically, Section 101 of the SECURE Act amends section 3(2) of the Employee Retirement Income Security Act (ERISA) to eliminate the commonality of interest requirement for establishing certain individual account plans, or ''pooled employer plans,'' that meet specific requirements. Among these requirements, plans must designate a ''pooled plan provider'' to serve as a named fiduciary and as the plan administrator. Further, section 101 of the SECURE Act requires pooled plan providers to register with the Department of Labor (the Department) and the Department of the Treasury (Treasury) before beginning operations. The statute expressly provides a separate authorization for the Department to require additional information. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 8, 2023 (88 FR 8317).

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.

Agency: DOL–EBS.

Title of Collection: Registration Requirements to Serve as a Pooled Plan Provider to Pooled Employer Plans.

OMB Control Number: 1210–0164.

Affected Public: Businesses or other for-profits.

Total Estimated Number of Respondents: 1,660.

Total Estimated Number of Responses: 2,813.

Total Estimated Annual Time Burden: 1,676 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michael Howell,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2023–22833 Filed 10–16–23; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Application for Continuation of Death Benefit for Student

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Workers' Compensation Programs (OWCP)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before November 16, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Michelle Neary by telephone at 202–693–6312, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Form LS–266 is used as an application for continuation of death benefits for a dependent who is a student. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 11, 2023 (88 FR 30346).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OWCP.

Title of Collection: Application for Continuation of Death Benefit for Student.

OMB Control Number: 1240–0026.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 20.

Total Estimated Number of Responses: 20.

Total Estimated Annual Time Burden: 10 hours.

Total Estimated Annual Other Costs Burden: $7.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michelle Neary,

Senior PRA Analyst.

[FR Doc. 2023–22830 Filed 10–16–23; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Registration for Public Data Service

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Chief Evaluation Office (CEO)-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 16, 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 request concerns user registrations to access a public Application Programming Interface providing machine readable subsets of public data generated by DOL programs and activities. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 20, 2023 (88 FR 39868).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–CEO.

Title of Collection: Registration for Public Data Service.

OMB Control Number: 1290–0NEW.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 200.

Total Estimated Number of Responses: 200.

Total Estimated Annual Time Burden: 30 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Acting Departmental Clearance Officer.

[FR Doc. 2023–22900 Filed 10–16–23; 8:45 am]

BILLING CODE 4510–HX–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 10 a.m., October 19, 2023.

PLACE: Board Room, 7th Floor, Room 7B, 1775 Duke Street (All visitors must use Diagonal Road Entrance), Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Board Briefing, Cybersecurity Update.
2. NCUA Rules and Regulations, Part 745, Simplification of Insurance Rules.
3. NCUA Rules and Regulations, Parts 701, 741, 746, 748, and 752, Fair Hiring in Banking.

CONTACT PERSON FOR MORE INFORMATION: Melane Conyers-Ausbrooks, Secretary of the Board, Telephone: 703–518–6304.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2023–22943 Filed 10–13–23; 11:15 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Antarctic Meteorite Collection, Documentation, and Curation Plan Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: On March 31, 2003, the National Science Foundation (NSF) issued a final rule that authorized the collection of meteorites in Antarctica for scientific purposes only. In addition, the regulations provide requirements for appropriate collection, handling, documentation, and curation of Antarctic meteorites to preserve their scientific value. These regulations implement the Antarctic Conservation Act of 1978, as amended by the Antarctic Science, Tourism and Conservation Act of 1996, and Article 7 of the Protocol on Environmental Protection to the Antarctic Treaty. The NSF is required to publish notice of the availability of Meteorite Collection, Documentation, and Curation Plans received under the Antarctic Conservation Act of 1978. This is the required notice.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this plan by November 1, 2023. This plan 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.

FOR FURTHER INFORMATION CONTACT: Andrew Titmus, ACA Permit Officer, at the above address, 703–292–4479, or *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: An Antarctic meteorite collection, documentation, and curation plan has been received from James Karner of the University of Utah.

Kimiko S. Bowens-Knox,

Program Analyst, Office of Polar Programs.

[FR Doc. 2023–22622 Filed 10–16–23; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will convene a meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on October 23–24, 2023. A sample of agenda items to be discussed during the public session includes: an overview of ICRP 153, a discussion on veterinary release; financial assurance rulemaking for disposition of category 1–3. *The agenda is subject to change.* The current agenda and any updates will be available on the ACMUI's Meetings and Related Documents web page at *https://www.nrc.gov/reading-rm/doc-collections/acmui/meetings/2023.html* or by emailing Ms. L. Armstead at the contact information below.

FOR FURTHER INFORMATION CONTACT: Ms. L. Armstead, 301–415–1650, email: *lxa5@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Purpose: Discuss issues related to 10 CFR part 35 Medical Use of Byproduct Material.

Date and Time for Open Sessions: October 23, 2023, from 10:00 a.m. to 4:35 p.m. EST.

Date and Time for Closed Session: October 24, 2023, from 8:30 p.m. to 11:35 p.m. EST. This session will be closed to conduct the ACMUI's required annual training.

Address for Public Meeting: U.S. Nuclear Regulatory Commission, Two White Flint North Building (Meeting Room T2D30), 11555 Rockville Pike, Rockville, Maryland 20852.

Date	Webinar information (Microsoft Teams)
October 23, 2023	*Link:* *https://teams.microsoft.com/dl/launcher/launcher.html?url=%2F_%23%2Fl%2Fmeetup-join%2F19%3Ameeting_N2NhN2E0NDAtZGM2MC00N2FlLWEzZTAtZDcxN2FlZTg3NWYy%40thread.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%2522e8d01475-c3b5-436a-a065-5def4c64f52e%2522%252c%2522Oid%2522%253a%2522304f46bf-32c2-4e0f-912c-878db895e74a%2522%257d%26anon%3Dtrue&type=meetup-joinamp;deeplinkId=2bb6496e-e273-4726-ade3-ac43b6f94c67&directDl=true&msLaunch=true&enableMobilePage=false&suppressPrompt=true.* *Meeting ID:* 220 719 213 35. *Passcode:* mkTtLH. *Call in number (audio only):* +1 301–576–2978, Silver Spring, MD Phone Conference ID: 353 440 864#.

Public Participation: Any member of the public who wishes to participate in the meeting in person, via Microsoft Teams, or via phone should contact Ms. L. Armstead using the information below.

Conduct of the Meeting

The ACMUI Chair, Darlene F. Metter, M.D., will preside over the meeting. Dr. Metter will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit an electronic copy to Ms. L. Armstead using the contact information listed above. All submittals must be received by the close of business on October 18, 2023, and must only pertain to the topics on the agenda.

2. Questions and comments from members of the public will be permitted during the meeting, at the discretion of the ACMUI Chair.

3. The draft transcript and meeting summary will be available on ACMUI's website *https://www.nrc.gov/reading-rm/doc-collections/acmui/meetings/2023.html* on or about December 8, 2023.

4. Persons who require special services, such as those for the hearing impaired, should notify Ms. L. Armstead of their planned participation.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10 of the *Code of Federal Regulations,* Part 7.

Note: This meeting notice was late in order to adjust the closed session meeting topics to reflect new internal personnel practices of the ACMUI.

Dated at Rockville, Maryland this 12th day of October 2023.

For the U.S. Nuclear Regulatory Commission.

Russell E. Chazell,

Advisory Committee Management Officer.

[FR Doc. 2023–22852 Filed 10–16–23; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. R2024–1; Order No. 6730]

Market Dominant Price Adjustment

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is recognizing a recently filed Postal Service notice of inflation-based rate adjustments affecting market dominant domestic and international products and services, along with proposed classification changes. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 6, 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

On October 6, 2023, the Postal Service filed a notice of price adjustments affecting Market Dominant domestic and international products and services, along with proposed classification changes to the Mail Classification Schedule (MCS).[1] The intended effective date for the planned price adjustments is January 21, 2024. Notice at 1. The Notice, which was filed pursuant to 39 CFR part 3030, triggers a notice-and-comment proceeding. 39 CFR 3030.125.

II. Overview of the Postal Service's Filing

The Postal Service's filing consists of the Notice, which the Postal Service represents addresses data and information required under 39 CFR 3030.122 and 39 CFR 3030.123; three attachments (Attachments A–C) to the Notice; and six public library references and one non-public library reference.

Attachment A presents the planned price and related product description changes to the MCS. Notice, Attachment A. Attachments B and C address workshare discounts and the price cap calculation, respectively. *Id.* Attachments B and C.

The first five public library references provide supporting documentation for the five classes of mail, and the sixth public library reference shows the banked rate adjustment authority for each class of mail over the last five years.[2] The Postal Service also filed a library reference pertaining to the two international mail products within First-Class Mail (Outbound Single-Piece First-Class Mail International and Inbound Letter Post) under seal and applied for non-public treatment of those materials.[3]

The Postal Service's planned percentage changes by class are, on average, as follows:

Market dominant class	Planned price adjustment (%)
First-Class Mail	1.969
USPS Marketing Mail	1.961
Periodicals	1.959
Package Services	1.960
Special Services	2.168

Notice at 5. Price adjustments for products within classes vary from the average. *See, e.g., id.* at 6, 10 (Table 6 showing range for First-Class Mail products and Table 9 showing range for USPS Marketing Mail products). The Postal Service identifies the effect of its proposed classification changes on the MCS in Attachment A. *Id.* at 21; *id.* Attachment A.

III. Initial Administrative Actions

Pursuant to 39 CFR 3030.124(a), the Commission establishes Docket No. R2024–1 to consider the planned price adjustments for Market Dominant postal products and services, as well as the related classification changes, identified in the Notice. The Commission invites comments from interested persons on whether the Postal Service's planned price adjustments are consistent with applicable statutory and regulatory requirements. 39 CFR 3030.125. The applicable statutory and regulatory requirements the Commission considers in its review are the requirements of 39 CFR part 3030, Commission directives and orders, and 39 U.S.C. 3626, 3627, and 3629. 39 CFR 3030.126(b). Comments are due no later than November 6, 2023. 39 CFR 3030.124(f). The Commission will not accept late-filed comments as it is not practicable due to the expedited timeline for this proceeding. *See* 39 CFR 3030.126(b).

The public portions of the Postal Service's filing are available for review on the Commission's website (*http://www.prc.gov*). Comments and other material filed in this proceeding will be available for review on the Commission's website, unless the information contained therein is subject to an application for non-public treatment. The Commission's rules on non-public materials (including access to documents filed under seal) appear in 39 CFR part 3011.

Pursuant to 39 U.S.C. 505, the Commission appoints John Avila to represent the interests of the general public (Public Representative) in this proceeding.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. R2024–1 to consider the planned price adjustments for Market Dominant postal products and services, as well as the related classification changes, identified in the Postal Service's October 6, 2023 Notice.

2. Comments on the planned price adjustments and related classification changes are due no later than November 6, 2023.

3. Pursuant to 39 U.S.C. 505, John Avila is appointed to serve as an officer of the Commission to represent the interests of the general public (Public Representative) in this proceeding.

4. The Commission directs the Secretary of the Commission to arrange for prompt publication of this notice in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2023–22798 Filed 10–16–23; 8:45 am]

BILLING CODE 7710–FW–P

[1] United States Postal Service Notice of Market-Dominant Price Change, October 6, 2023 (Notice).

[2] United States Postal Service Notice of Filing Workpapers/Library References, October 6, 2023, at 2.

[3] USPS Notice of Filing First-Class Mail International and Inbound Letter Post Workpapers, as well as Application for Non-Public Treatment of Materials Filed Under Seal, October 6, 2023, at 1, Attachment 1.

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2023–67; MC2024–5 and CP2024–5; MC2024–6 and CP2024–6]

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 19, 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).:* CP2023–67; *Filing Title:* Notice of the United States Postal Service of Filing Modification One to Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 12, *Filing Acceptance Date:* October 11, 2023; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Katalin K. Clendenin; *Comments Due:* October 19, 2023.

2. *Docket No(s).:* MC2024–5 and CP2024–5; *Filing Title:* USPS Request to Add Parcel Return Service Contract 20 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 11, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* October 19, 2023.

3. *Docket No(s).:* MC2024–6 and CP2024–6; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 72 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 10, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* October 19, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2023–22905 Filed 10–16–23; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–3 and CP2024–3; MC2024–4 and CP2024–4]

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 18, 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).:* MC2024–3 and CP2024–3; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 70 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 10, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* October 18, 2023.

2. *Docket No(s).:* MC2024–4 and CP2024–4; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 71 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance*

[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).

Date: October 10, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* October 18, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2023–22820 Filed 10–16–23; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–240, OMB Control No. 3235–0216]

Proposed Collection; Comment Request; Extension: Rule 19a–1

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Section 19(a) (15 U.S.C. 80a–19(a)) of the Investment Company Act of 1940 (the ''Act'') (15 U.S.C. 80a) makes it unlawful for any registered investment company to pay any dividend or similar distribution from any source other than the company's net income, unless the payment is accompanied by a written statement to the company's shareholders which adequately discloses the sources of the payment. Section 19(a) authorizes the Commission to prescribe the form of such statement by rule.

Rule 19a–1 (17 CFR 270.19a–1) under the Act, entitled ''Written Statement to Accompany Dividend Payments by Management Companies,'' sets forth specific requirements for the information that must be included in statements made pursuant to section 19(a) by or on behalf of management companies.[1] The rule requires that the statement indicate what portions of distribution payments are made from net income, net profits from the sale of a security or other property (''capital gains'') and paid-in capital. When any part of the payment is made from capital gains, rule 19a–1 also requires that the statement disclose certain other information relating to the appreciation or depreciation of portfolio securities. If an estimated portion is subsequently determined to be significantly inaccurate, a correction must be made on a statement made pursuant to section 19(a) or in the first report to shareholders following the discovery of the inaccuracy.

The purpose of rule 19a–1 is to afford fund shareholders adequate disclosure of the sources from which distribution payments are made. The rule is intended to prevent shareholders from confusing income dividends with distributions made from capital sources. Absent rule 19a–1, shareholders might receive a false impression of fund gains.

Based on a review of filings made with the Commission, the staff estimates that approximately 12,900 series of registered investment companies that are management companies may be subject to rule 19a–1 each year,[2] and that each portfolio on average mails two statements per year to meet the requirements of the rule.[3] The staff further estimates that the time needed to make the determinations required by the rule and to prepare the statement required under the rule is approximately 1 hour per statement. The total annual burden for all portfolios therefore is estimated to be approximately 25,800 burden hours.[4]

The staff estimates that approximately one-third of the total annual burden (8,600 hours) would be incurred by a paralegal with an average hourly wage rate of approximately $253 per hour,[5] and approximately two-thirds of the annual burden (17,200 hours) would be incurred by a compliance clerk with an average hourly wage rate of $82 per hour.[6] The staff therefore estimates that the aggregate annual burden, in dollars, of the hours needed to comply with the paperwork requirements of the rule is approximately $3,586,200 ((8,600 hours × $253 = $2,175,800) + (17,200 hours × $82 = $1,410,400)). It is estimated that there is no cost burden of rule 19a–1 other than these estimates.

To comply with state law, many investment companies already must distinguish the different sources from which a shareholder distribution is paid and disclose that information to shareholders. Thus, many investment companies would be required to distinguish the sources of shareholder dividends whether or not the Commission required them to do so under rule 19a–1.

These estimates are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Compliance with the collection of information required by rule 19a–1 is mandatory for management companies that make statements to shareholders pursuant to section 19(a) of the Act. 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 control number.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by December 18, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Acting Director/Chief

[1] Section 4(3) of the Act (15 U.S.C. 80a–4(3)) defines ''management company'' as ''any investment company other than a face amount certificate company or a unit investment trust.''

[2] This estimate is as of December 2022 and is based on the Commission staff's review of EDGAR filings through July 31, 2023. The number of management investment company portfolios that make distributions for which compliance with rule 19a–1 is required depends on a wide range of factors and can vary greatly across years. Therefore, the calculation of estimated burden hours below is based on the total number of management investment company portfolios, each of which may be subject to rule 19a–1.

[3] A few portfolios make monthly distributions from sources other than net income, so the rule requires them to send out a statement 12 times a year. Other portfolios never make such distributions.

[4] This estimate is based on the following calculation: 12,900 management investment company portfolios × 2 statements per year × 1 hour per statement = 25,800 burden hours.

[5] Hourly rates are derived from the Securities Industry and Financial Markets Association (''SIFMA''), Management and Professional Earnings in the Securities Industry 2013, modified to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[6] Hourly rates are derived from SIFMA's Office Salaries in the Securities Industry 2013, modified to account for an 1,800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: October 11, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–22818 Filed 10–16–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–208, OMB Control No. 3235–0213]

Proposed Collection; Comment Request; Extension: Rule 17g–1

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17g–1 (17 CFR 270.17g–1) under the Investment Company Act of 1940 (the ''Act'') (15 U.S.C. 80a–17(g)) governs the fidelity bonding of officers and employees of registered management investment companies (''funds'') and their advisers. Rule 17g–1 requires, in part, the following:

Independent Directors' Approval

The form and amount of the fidelity bond must be approved by a majority of the fund's independent directors at least once annually, and the amount of any premium paid by the fund for any ''joint insured bond,'' covering multiple funds or certain affiliates, must be approved by a majority of the fund's independent directors.

Terms and Provisions of the Bond

The amount of the bond may not be less than the minimum amounts of coverage set forth in a schedule based on the fund's gross assets. The bond must provide that it shall not be cancelled, terminated, or modified except upon 60-days written notice to the affected party and to the Commission. In the case of a joint insured bond, 60-days written notice must also be given to each fund covered by the bond. A joint insured bond must provide that the fidelity insurance company will provide all funds covered by the bond with a copy of the agreement, a copy of any claim on the bond, and notification of the terms of the settlement of any claim prior to execution of that settlement. Finally, a fund that is insured by a joint bond must enter into an agreement with all other parties insured by the joint bond regarding recovery under the bond.

Filings With the Commission

Upon the execution of a fidelity bond or any amendment thereto, a fund must file with the Commission within 10 days: (i) a copy of the executed bond or any amendment to the bond, (ii) the independent directors' resolution approving the bond, and (iii) a statement as to the period for which premiums have been paid on the bond. In the case of a joint insured bond, a fund must also file: (i) a statement showing the amount the fund would have been required to maintain under the rule if it were insured under a single insured bond; and (ii) the agreement between the fund and all other insured parties regarding recovery under the bond. A fund must also notify the Commission in writing within five days of any claim or settlement on a claim under the fidelity bond.

Notices to Directors

A fund must notify by registered mail each member of its board of directors of: (i) any cancellation, termination, or modification of the fidelity bond at least 45 days prior to the effective date; and (ii) the filing or settlement of any claim under the fidelity bond when notification is filed with the Commission.

Rule 17g–1's independent directors' annual review requirements, fidelity bond content requirements, joint bond agreement requirement, and the required notices to directors are designed to ensure the safety of fund assets against losses due to the conduct of persons who may obtain access to those assets. These requirements also seek to facilitate oversight of a fund's fidelity bond. The rule's required filings with the Commission are designed to assist the Commission in monitoring funds' compliance with the fidelity bond requirements.

Based on conversations with representatives in the fund industry, the Commission staff estimates that for each of the estimated 2,543 active funds (respondents),[1] the average annual paperwork burden associated with rule 17g–1's requirements is two hours, one hour each for a compliance attorney and the board of directors as a whole. The time spent by a compliance attorney includes time spent filing reports with the Commission for fidelity losses (if any) as well as paperwork associated with any notices to directors, and managing any updates to the bond and the joint agreement (if one exists). The time spent by the board of directors as a whole includes any time spent initially establishing the bond, as well as time spent on annual updates and approvals. The Commission staff therefore estimates the total ongoing paperwork burden hours per year for all funds required by rule 17g–1 to be 5,086 hours (2,543 funds × 2 hours = 5,086 hours). Commission staff continues to estimate that the filing and reporting requirements of rule 17g–1 do not entail any external cost burdens.

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of Commission rules. The collection of information required by rule 17g–1 is mandatory and will not be kept confidential. 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 control number.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by December 18, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Acting Director/Chief Information Officer, Securities and

[1] Based on a review of fund filings for the three-year period from January 1, 2020 to December 31, 2022, Commission staff calculates there are 2,186 funds (registered open- and closed-end funds, and business development companies) that must comply with the collections of information under rule 17g–1, and which collectively submit an estimated 2,543 filings on Form 17G annually.

Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: October 11, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–22815 Filed 10–16–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98721; File No. SR–NASDAQ–2023–040]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7, Section 2

October 11, 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 29, 2023, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend The Nasdaq Options Market LLC (''NOM'') Pricing Schedule at Options 7, Section 2.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on October 2, 2023.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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 NOM's Pricing Schedule at Options 7, Section 2, Nasdaq Options Market—Fees and Rebates. Today, NOM Options 7, Section 2(1) provides for various fees and rebates applicable to NOM Participants.

Today, NOM Market Maker [3] Rebates to Add Liquidity in Penny Symbols are paid per the highest tier achieved among the below tiers.

MONTHLY VOLUME

Tier 1	Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of up to 0.10% of total industry customer equity and ETF option average daily volume (''ADV'') contracts per day in a month.
Tier 2	Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.10% of total industry customer equity and ETF option ADV contracts per day in a month.
Tier 3	Participant: (a) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% of total industry customer equity and ETF option ADV contracts per day in a month; or (b)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.15% of total industry customer equity and ETF option ADV contracts per day in a month, (2) transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent (i) 0.50% or more of Consolidated Volume (''CV'') which adds liquidity in the same month on The Nasdaq Stock Market or (ii) 50 million shares or more ADV which adds liquidity in the same month on The Nasdaq Stock Market, and (3) executes 1.5 million shares or more ADV in the same month utilizing the M–ELO order type on The Nasdaq Stock Market.
Tier 4	Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of above 0.60% of total industry customer equity and ETF option ADV contracts per day in a month.
Tier 5	Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of above 0.40% of total industry customer equity and ETF option ADV contracts per day in a month and transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.40% or more of Consolidated Volume (''CV'') which adds liquidity in the same month on The Nasdaq Stock Market.
Tier 6	Participant: (a)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.95% of total industry customer equity and ETF option ADV contracts per day in a month, (2) executes Total Volume of 250,000 or more contracts per day in a month, of which 30,000 or more contracts per day in a month must be removing liquidity, and (3) adds Firm, Broker-Dealer and Non-NOM Market Maker liquidity in Non-Penny Symbols of 10,000 or more contracts per day in a month; or (b)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 1.50% of total industry customer equity and ETF option ADV contracts per day in a month, and (2) executes Total Volume of 250,000 or more contracts per day in a month, of which 15,000 or more contracts per day in a month must be removing liquidity.

''Total Volume'' is defined as Customer, Professional, Firm, Broker-Dealer, Non-NOM Market Maker and NOM Market Maker volume in Penny Symbols and/or Non-Penny Symbols which either adds or removes liquidity on NOM.

Proposal

At this time, the Exchange proposes to amend Tiers 5 and 6 of the NOM Market

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''NOM Market Maker'' or (''M'') is a Participant that has registered as a Market Maker on NOM pursuant to Options 2, Section 1, and must also remain in good standing pursuant to Options 2, Section 9. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security. *See* Options 7, Section 1(a).

Maker Rebates to Add Liquidity in Penny Symbols.

NOM Market Maker Tier 5

Currently, the NOM Market Maker Tier 5 Rebate to Add Liquidity in Penny Symbols provides:

Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of above 0.40% of total industry customer equity and ETF option ADV contracts per day in a month and transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.40% or more of Consolidated Volume (''CV'') which adds liquidity in the same month on The Nasdaq Stock Market.

The Exchange proposes to amend the NOM Market Maker Tier 5 Rebate to Add Liquidity in Penny Symbols by adding an additional qualifier to achieve the rebate. The Exchange proposes to provide that a Participant may add NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 1.00% of total industry customer equity and ETF option ADV contracts per day in a month to qualify for the NOM Market Maker Tier 5 Rebate to Add Liquidity in Penny Symbols. In the alternative, as is the case today, a Participant may continue to add NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of above 0.40% of total industry customer equity and ETF option ADV contracts per day in a month and transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.40% or more of Consolidated Volume (''CV'') which adds liquidity in the same month on The Nasdaq Stock Market to qualify for the NOM Market Maker Tier 5 Rebate to Add Liquidity in Penny Symbols. Therefore, a Participant may qualify for the $0.44 per contract NOM Market Maker Tier 5 Rebate to Add Liquidity in Penny Symbols by either qualifying for the new tier qualifier that is denoted by an ''a'' or the current qualifier which is denoted by a ''b.'' As proposed, the NOM Market Maker Tier 5 Rebate to Add Liquidity in Penny Symbols would provide:

Participant: (a) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 1.00% of total industry customer equity and ETF option ADV contracts per day in a month; or (b) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of above 0.40% of total industry customer equity and ETF option ADV contracts per day in a month and transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.40% or more of Consolidated Volume (''CV'') which adds liquidity in the same month on The Nasdaq Stock Market.

The Exchange believes the additional proposed qualifier for the NOM Market Maker Tier 5 Rebate to Add Liquidity in Penny Symbols will provide Participants an additional way to achieve the Tier 5 rebate. The new qualification criteria is intended to attract additional order flow to NOM. Any Participant may interact with the additional liquidity attracted by this incentive.

NOM Market Maker Tier 6

Currently, the NOM Market Maker Tier 6 Rebate to Add Liquidity in Penny Symbols provides:

Participant: (a)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.95% of total industry customer equity and ETF option ADV contracts per day in a month, (2) executes Total Volume of 250,000 or more contracts per day in a month, of which 30,000 or more contracts per day in a month must be removing liquidity, and (3) adds Firm, Broker-Dealer and Non-NOM Market Maker liquidity in Non-Penny Symbols of 10,000 or more contracts per day in a month; or (b)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 1.50% of total industry customer equity and ETF option ADV contracts per day in a month, and (2) executes Total Volume of 250,000 or more contracts per day in a month, of which 15,000 or more contracts per day in a month must be removing liquidity.

Currently, there are two ways to qualify for the $0.48 per contract NOM Market Maker Tier 6 Rebate to Add Liquidity in Penny Symbols. A Participant may add NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.95% of total industry customer equity and ETF option ADV contracts per day in a month, (2) execute Total Volume of 250,000 or more contracts per day in a month, of which 30,000 or more contracts per day in a month must be removing liquidity, and (3) add Firm, Broker-Dealer and Non-NOM Market Maker liquidity in Non-Penny Symbols of 10,000 or more contracts per day in a month to qualify for the NOM Market Maker Tier 6 Rebate to Add Liquidity in Penny Symbols. This option is denoted as ''a.'' In the alternative, a Participant may add NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 1.50% of total industry customer equity and ETF option ADV contracts per day in a month, and (2) execute Total Volume of 250,000 or more contracts per day in a month, of which 15,000 or more contracts per day in a month must be removing liquidity to qualify for the NOM Market Maker Tier 6 Rebate to Add Liquidity in Penny Symbols. This option is denoted as ''b.''

At this time, the Exchange proposes to amend the qualifier in ''b'' of the NOM Market Maker Tier 6 Rebate to Add Liquidity in Penny Symbols by lowering the (b)(1) qualifier from 1.50% to 1.40%. The proposed amended (b)(1) qualifier would require a Participant to add NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 1.40% [4] of total industry customer equity and ETF option ADV contracts per day in a month. As proposed, the amended NOM Market Maker Tier 6 Rebate to Add Liquidity in Penny Symbols would provide:

Participant: (a)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.95% of total industry customer equity and ETF option ADV contracts per day in a month, (2) executes Total Volume of 250,000 or more contracts per day in a month, of which 30,000 or more contracts per day in a month must be removing liquidity, and (3) adds Firm, Broker-Dealer and Non-NOM Market Maker liquidity in Non-Penny Symbols of 10,000 or more contracts per day in a month; or (b)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 1.40% of total industry customer equity and ETF option ADV contracts per day in a month, and (2) executes Total Volume of 250,000 or more contracts per day in a month, of which 15,000 or more contracts per day in a month must be removing liquidity.

The Exchange believes that lowering part of the NOM Market Maker Tier 6 Rebate to Add Liquidity in Penny Symbols qualifier will attract additional order flow to NOM by allowing additional Participants to qualify for this tier.

2. Statutory Basis

The proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission* [5] (''NetCoalition''), the D.C. Circuit stated, ''[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

[4] Of note, 1.50% equates to approximately 490,000 contracts per day adding liquidity and 1.40% equates to approximately 450,000 contracts per day adding liquidity.

[5] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

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'. . . .'' [6]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is only one of seventeen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to attract additional order flow to the Exchange and increase its market share relative to its competitors.

NOM Market Maker Tier 5

The Exchange's proposal to amend the NOM Market Maker Tier 5 Rebate to Add Liquidity in Penny Symbols by adding an additional qualifier is reasonable because it will provide Participants another way to qualify for the Tier 5 rebate. NOM Participants that currently qualify for the NOM Market Maker Tier 5 Rebate to Add Liquidity in Penny Symbols will continue to qualify for this rebate because the current qualifications are not being amended. With this proposal, additional NOM Participants may be able to qualify for the NOM Market Maker Tier 5 Rebate to Add Liquidity in Penny Symbols utilizing the proposed new qualifier. The new qualification criteria is intended to attract additional order flow to NOM. Any Participant may interact with the additional liquidity attracted by this incentive.

The Exchange's proposal to amend the NOM Market Maker Tier 5 Rebate to Add Liquidity in Penny Symbols by adding an additional qualifier is equitable and not unfairly discriminatory because the proposed tier qualifier will be applied uniformly to all qualifying NOM Participants.

NOM Market Maker Tier 6

The Exchange's proposal to amend part ''b'' of the NOM Market Maker Tier 6 Rebate to Add Liquidity in Penny Symbols by lowering the (b)(1) qualifier from 1.50% to 1.40% is reasonable because it will attract additional order flow to NOM by allowing additional Participants to qualify for this tier. NOM Participants who currently qualify for the NOM Market Maker Tier 6 Rebate to Add Liquidity in Penny Symbols will continue to qualify for this rebate. With this proposal, additional Participants may be able to qualify for the NOM Market Maker Tier 6 Rebate to Add Liquidity in Penny Symbols with the proposed lower (b)(1) qualifier. The proposed lower (b)(1) qualification criteria is intended to attract additional order flow to NOM. Any Participant may interact with the additional liquidity attracted by this incentive.

The Exchange's proposal to amend part ''b'' of the NOM Market Maker Tier 6 Rebate to Add Liquidity in Penny Symbols by lowering the (b)(1) qualifier from 1.50% to 1.40% is equitable and not unfairly discriminatory because the proposed tier qualifier will be applied uniformly to all qualifying NOM Participants.

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.

Intermarket Competition

The Exchange 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 pricing to remain competitive with other exchanges. Because competitors are free to modify their pricing in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which pricing changes in this market may impose any burden on competition is extremely limited because other options exchanges offer similar pricing.

Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and rebate changes. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

Intramarket Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

NOM Market Maker Tier 5

The Exchange's proposal to amend the NOM Market Maker Tier 5 Rebate to Add Liquidity in Penny Symbols by adding an additional qualifier does not impose an undue burden on competition because the proposed tier qualifier will be applied uniformly to all qualifying NOM Participants.

NOM Market Maker Tier 6

The Exchange's proposal to amend part ''b'' of the NOM Market Maker Tier 6 Rebate to Add Liquidity in Penny Symbols by lowering the (b)(1) qualifier from 1.50% to 1.40% does not impose an undue burden on competition because the proposed tier qualifier will be applied uniformly to all qualifying NOM Participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[7]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or

[6] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

• Send an email to *rule-comments@sec.gov.* Please include file number SR–NASDAQ–2023–040 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–NASDAQ–2023–040. 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–NASDAQ–2023–040 and should be submitted on or before November 7, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–22811 Filed 10–16–23; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98722; File No. SR–CBOE–2023–060]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Fees for the Cboe Silexx Platform

October 11, 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 October 5, 2023, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') 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 Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend fees for the Cboe Silexx platform. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend fees for the Cboe Silexx platform (''Cboe Silexx''), effective September 29, 2023.[3] By way of background, the Silexx platform consists of a ''front-end'' order entry and management trading platform (also referred to as the ''Silexx terminal'') for listed stocks and options that supports both simple and complex orders, and a ''back-end'' platform which provides a connection to the infrastructure network. From the Silexx platform (*i.e.,* the collective front-end and back-end platform), a Silexx user has the capability to send option orders to U.S. options exchanges, send stock orders to U.S. stock exchanges (and other trading centers), input parameters to control the size, timing, and other variables of their trades, and also includes access to real-time options and stock market data, as well as access to certain historical data. The Silexx platform is designed so that a user may enter orders into the platform to send to an executing broker (including Trading Permit Holders (''TPHs'')) of its choice with connectivity to the platform, which broker will then send the orders to Cboe Options (if the broker is a TPH) or other U.S. exchanges (and trading centers) in accordance with the user's instructions. The Silexx front-end and back-end platforms are a software application that is installed locally on a user's desktop. Silexx grants users licenses to use the platform, and a firm or individual does not need to be a TPH to license the platform.

The Exchange offers several versions of its Silexx platform. Originally, the Exchange offered the following versions of the Silexx platform: Basic, Pro, Sell-Side, Pro Plus Risk and Buy-Side Manager (''Legacy Platforms''). The Legacy Platforms are designed so that a User may enter orders into the platform to send to the executing broker, including TPHs, of its choice with connectivity to the platform. The executing broker can then send orders to Cboe Options (if the broker-dealer is a TPH) or other U.S. exchanges (and trading centers) in accordance with the User's instructions. Users cannot directly route orders through any of the Legacy Platforms to an exchange or trading center nor is the platform

[3] The Exchange initially filed the proposed fee changes on September 29, 2023 (SR–CBOE–2023–059). On October 5, 2023, the Exchange withdrew that filing and submitted this proposal.

integrated into or directly connected to Cboe Option's System. In 2019, the Exchange made available a new version of the Silexx platform, Silexx FLEX, which supports the trading of FLEX Options and allows authorized Users with direct access to the Exchange.[4] In 2020, the Exchange made an additional version of the Silexx platform available, Cboe Silexx, which supports the trading of non-FLEX Options and allows authorized Users with direct access to the Exchange.[5] Cboe Silexx is essentially the same platform as Silexx FLEX, with the same applicable functionality, except that it additionally supports direct access for non-FLEX trading. Use of any version of the Silexx platform is completely optional.

The Exchange has also assessed Login ID fees for each Silexx Platform. Particularly, the Exchange assesses the following monthly fees (per Login ID): $200 for Basic, $400 for Pro, $475 for Sell-Side, $600 for Pro Plus Risk, $300 for Buy-Side Manager, and with respect to Cboe Silexx, $399 for the first 16 Login IDs, $299 per each additional Login ID for the next 16 Login IDs, and a fee of $199 per each additional Login ID thereafter (*i.e.,* 33+ Login IDs). No fee is assessed for Silexx FLEX. The Exchange also charges a Market Data Feeds fee, for connections to other market data feeds. For the Market Data Feeds fee, the fee is the actual cost, determined on a time (per hour) and materials basis, which is passed through to the user.

The Exchange is transitioning the Legacy Platforms to the current version of Cboe Silexx.[6] While each user completes the transition, they may choose to have access to both the old and new versions of Cboe Silexx. Once their transition is complete, the user will only have access to the new version. The Exchange proposes to provide for a waiver of any duplicative fees incurred because of the transition.

Specifically, the Exchange proposes a waiver for new users of Cboe Silexx who are migrating from the Legacy Platforms of any Cboe Silexx Login ID fees that are incurred during the migration for up to two months. Login ID fees for the Legacy Platforms will continue to apply to migrating users, as applicable (*i.e.,* to extent users which to retain the ability to login to both versions of the platform during the migration period). Similarly, the Exchange proposes a waiver of any duplicative Market Data Feeds fees incurred by users during the migration to the new Cboe Silexx since, while each user completes the transition, they could receive market data on both versions (old and new) of the platform.

The proposed waivers will allow users of Cboe Silexx to transition to the new version of the platform without incurring duplicative Login ID and Market Data Feed fees for access to both the old and new versions of Cboe Silexx during this transitional period. The Exchange also believes not assessing duplicative fees for Users transitioning to Cboe Silexx will serve as an incentive to market participants to start using the Cboe Silexx platform, while also providing time and flexibility for such Users to become familiar with and fully acclimated to the new platform.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Additionally, the Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

In particular, the Exchange believes the proposed rule change is reasonable, equitable, and not unfairly discriminatory because the fee waivers will apply to new users of Cboe Silexx who are migrating from the Legacy Platforms. The Exchange believes waiving the Login ID and Market Data Feed fees for Cboe Silexx during this transition period is reasonable because it will allow all TPHs that migrate to the Cboe Silexx platform to avoid having to pay duplicative fees that they would otherwise have to pay as a result of the migration to the platform. The waivers are also reasonable, equitable and not unfairly discriminatory because the waiver applies to users who are already subject to a monthly Login ID fee (albeit for the Legacy Platform), as well as Market Data Feed fees (for those receiving it on the Legacy Platform). Additionally, the fee waiver period will be limited to the timeframe during which such Users have access to the old and new version of Cboe Silexx and would otherwise result in duplicative fees. The Exchange further believes a fee waiver of two months is an appropriate and reasonable amount of time for Users to become familiar with and fully acclimated to the new platform and therefore able to terminate their connection to the Legacy Platforms.

Finally, the Exchange notes that use of the platform, is discretionary and not compulsory, as users can choose to route orders, including to Cboe Options, without the use of the platform. The Exchange makes the platform available as a convenience to market participants, who will continue to have the option to use any order entry and management system available in the marketplace to send orders to the Exchange and other exchanges; the platform is merely an alternative offered by the Exchange.

[4] *See* Securities Exchange Act Release No. 87028 (September 19, 2019) 84 FR 50529 (September 25, 2019) (SR–CBOE–2019–061). Only Users authorized for direct access and who are approved to trade FLEX Options may trade FLEX Options via Cboe Silexx.

[5] *See* Securities Exchange Act Release No. 88741 (April 24, 2020) 85 FR 24045 (April 30, 2020) (SR–CBOE–2020–040). Only authorized Users and associated persons of Users may establish connectivity to and directly access the Exchange, pursuant to Rule 5.5.

[6] Only authorized Users and associated persons of Users will continue to be able to establish connectivity to and directly access the Exchange, pursuant to Rule 5.5. Unauthorized Users will not be able to connect directly to the Exchange. The new Cboe Silexx platform will function in the same manner as the Legacy Platforms versions currently available to Users: it will be completely voluntary; orders entered through the platform will receive no preferential treatment as compared to orders electronically sent to Cboe Options in any other manner; orders entered through the platform will be subject to current trading rules in the same manner as all other orders sent to the Exchange, which is the same as orders that are sent through the Exchange's System today; the Exchange's System will not distinguish between orders sent from Silexx and orders sent in any other manner; and Silexx will provide technical support, maintenance and user training for the new platform version upon the same terms and conditions for all Users. The Exchange plans to decommission the Legacy Platforms at a future to-be-determined date, at which time the Legacy Platforms will be unavailable to users.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *Id.*

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 proposed change will not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because proposed rule change applies to all users who are migrating to Cboe Silexx from the Legacy Platforms and are already paying Login ID and/or market data fees, as applicable. Further, the proposed rule change relates to an optional platform. The proposed fee amendments will apply to similarly situated participants uniformly, as described in detail above. As discussed, the use of the platform continues to be completely voluntary and market participants will continue to have the flexibility to use any entry and management tool that is proprietary or from third-party vendors, and/or market participants may choose any executing brokers to enter their orders. The Cboe Silexx platform is not an exclusive means of trading, and if market participants believe that other products, vendors, front-end builds, etc. available in the marketplace are more beneficial than Cboe Silexx, they may simply use those products instead. Use of the functionality is completely voluntary.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change applies only to Cboe Options. Additionally, Cboe Silexx is similar to types of products that are widely available throughout the industry, including from some exchanges, at similar prices. To the extent that the proposed changes make Cboe Options a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Cboe Options market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and paragraph (f) of Rule 19b–4 [11] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CBOE–2023–060 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CBOE–2023–060. 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–CBOE–2023–060 and should be submitted on or before November 7, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–22812 Filed 10–16–23; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–361, OMB Control No. 3235–0411]

Proposed Collection; Comment Request; Extension: Rule 489 and Form F–N

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''Paperwork Reduction Act''), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 489 (17 CFR 230.489) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) requires foreign banks and foreign insurance companies and holding companies and finance subsidiaries of foreign banks and foreign insurance companies that are exempted from the definition of ''investment company'' by virtue of rules 3a–1 (17 CFR 270.3a–1), 3a–5 (17 CFR 270.3a–5), and 3a–6 (17 CFR 270.3a–6) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) to file Form F–N (17 CFR 239.43) to appoint an agent for service of process when making a public offering of securities in the United States. The information is collected so that the Commission and private

plaintiffs may serve process on foreign entities in actions and administrative proceedings arising out of or based on the offer or sales of securities in the United States by such foreign entities.

The Commission received an average of 25 Form F–N filings per year over the last three years (2020–2022). The Commission has previously estimated that the total annual burden associated with information collection and Form F–N preparation and submission is one hour per filing. Based on the Commission's experience with disclosure documents generally, the Commission continues to believe that this estimate is appropriate. Thus the estimated total annual burden for rule 489 and Form F–N is 25 hours.

Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. Compliance with the collection of information requirements of rule 489 and Form F–N is mandatory to obtain the benefit of the exemption. Responses to the collection of information will not be kept confidential. 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.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by December 18, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: October 11, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–22816 Filed 10–16–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–222, OMB Control No. 3235–0233]

Proposed Collection; Comment Request; Extension: Form 2–E

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 609 (17 CFR 230.609) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) requires small business investment companies and business development companies that have engaged in offerings of securities that are exempt from registration pursuant to Regulation E under the Securities Act of 1933 (17 CFR 230.601 to 610a) to report semi-annually on Form 2–E (17 CFR 239.201) the progress of the offering. The form solicits information such as the dates an offering commenced and was completed (if completed), the number of shares sold and still being offered, amounts received in the offering, and expenses and underwriting discounts incurred in the offering. The information provided on Form 2–E assists the staff in monitoring the progress of the offering and in determining whether the offering has stayed within the limits set for an offering exempt under Regulation E.

Although there have been no filings of Form 2–E since 2017, for administrative purposes the Commission estimates that, on average, approximately one respondent submits a Form 2–E filing each year. The Commission further estimates that this information collection imposes an annual burden of four hours and imposes no annual external cost burden.

The collection of information under Form 2–E is mandatory. The information provided by the form will not be kept confidential. 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.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by December 18, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: October 11, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–22817 Filed 10–16–23; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 12213]

30-Day Notice of Proposed Information Collection: Affidavit of Relationship for Minors Who Are Nationals of El Salvador, Guatemala, or Honduras

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

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 30 days for public comment preceding submission of the collection to OMB.

DATES: Submit comments up to November 16, 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:

- *Title of Information Collection:* Affidavit of Relationship for Minors who are Nationals of El Salvador, Guatemala, or Honduras.
- *OMB Control Number:* 1405–0217.
- *Type of Request:* Notice of request for public comment.
- *Originating Office:* PRM/A.
- *Form Number:* DS–7699.
- *Respondents:* Those seeking qualified family members to access the U.S. Refugee Admissions Program.
- *Estimated Number of Respondents:* 3,000.
- *Estimated Number of Responses:* 3,000.
- *Average Time per Response:* One hour.
- *Total Estimated Burden Time:* 3,000 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Voluntary.

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

To obtain biographical information about children overseas who intend to seek access to the USRAP, as well as other eligible family members or caregivers, for verification by the U.S. government. This form also assists DHS's U.S. Citizenship and Immigration Services to verify parent-child relationships during refugee case adjudication. This form is necessary for implementation of this program.

Methodology

Working with a State Department contracted Resettlement Agencies (RA), qualifying individuals in the United States must complete the AOR and submit supporting documentation to: (a) establish that they meet the requirements for being a qualifying individual who currently falls into one of the aforementioned categories; (b) provide a list of qualifying family members who may seek access to refugee resettlement in the United States. Once completed, the form is sent by the RA to the Refugee Processing Center (RPC) for case creation and processing. The information is used by the RPC for case management; by USCIS to determine that the qualifying individual falls into one of the aforementioned categories; and by the Resettlement Support Center (RSC) for case prescreening and further processing after DHS interview. The International Organization for Migration (IOM) administers the RSC in Latin America under a Memorandum of Understanding with the Department to conduct case prescreening and assist in the processing of refugee applicants.

Sarah R. Cross,

Deputy Assistant Secretary, Bureau of Population, Refugees and Migration, Department of State.

[FR Doc. 2023–22853 Filed 10–16–23; 8:45 am]

BILLING CODE 4710–33–P

STATE JUSTICE INSTITUTE

Grant Guideline; Notice

AGENCY: State Justice Institute.

ACTION: Grant guideline for fiscal year (FY) 2024.

SUMMARY: This guideline sets forth the administrative, programmatic, and financial requirements attendant to FY 2024 State Justice Institute grants.

DATES: October 6, 2023.

ADDRESSES: State Justice Institute, 12700 Fair Lakes Circle, Suite 340, Fairfax, VA 22033.

FOR FURTHER INFORMATION CONTACT: Jonathan Mattiello, Executive Director, State Justice Institute, 703–660–4979, *jonathan.mattiello@sji.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act of 1984 (42 U.S.C. 10701 *et seq.*), the State Justice Institute is authorized to award grants, cooperative agreements, and contracts to state and local courts, nonprofit organizations, and others for the purpose of improving the quality of justice in the state courts of the United States.

The following Grant Guideline is adopted by the State Justice Institute for FY 2024.

Table of Contents

I. Eligibility

Pursuant to the State Justice Institute Act of 1984 (42 U.S.C. 10701 *et seq.*), the State Justice Institute (SJI) is authorized to award grants, cooperative agreements, and contracts to state and local courts, national nonprofit organizations, and others for the purpose of improving the quality of justice in the state courts of the United States.

SJI is authorized by Congress to award grants, cooperative agreements, and contracts to the following entities and types of organizations:

- State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)).
- National nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of state governments (42 U.S.C. 10705(b)(1)(B)).
- National nonprofit organizations for the education and training of judges and support personnel of the judicial branch of state governments (42 U.S.C. 10705(b)(1)(C)). An applicant is considered a national education and training applicant under section 10705(b)(1)(C) if:
  - the principal purpose or activity of the applicant is to provide education and training to state and local judges and court personnel; and
  - the applicant demonstrates a record of substantial experience in the field of judicial education and training.
- Other eligible grant recipients (42 U.S.C. 10705 (b)(2)(A) through (D)).
  - Provided that the objectives of the project can be served better, SJI is also authorized to make awards to:
    - Nonprofit organizations with expertise in judicial administration.
    - Institutions of higher education.
    - Individuals, partnerships, firms, corporations (for-profit organizations must waive their fees).
    - Private agencies with expertise in judicial administration.
  - SJI may also make awards to state or local agencies and institutions other

than courts for services that cannot be adequately provided through nongovernmental arrangements (42 U.S.C. 10705(b)(3)).

SJI is prohibited from awarding grants to federal, tribal, and international courts.

II. Grant Application Deadlines

The SJI Board of Directors makes awards on a federal fiscal year quarterly basis. Applications may be submitted at any time but will be considered for award based only on the timetable below.

TABLE 1—APPLICATION DEADLINES BY FEDERAL FISCAL YEAR QUARTER

Federal fiscal year quarter	Application due date
1	November 1.
2	February 1.
3	May 1.
4	August 1.

To be considered timely, an application must be submitted by the application deadline noted above. Applicants must use the SJI Grants Management System (GMS) to submit all applications and post-award documents. The SJI GMS is accessible at *https://gms.sji.gov.* SJI urges applicants to submit applications at least 72 hours prior to the application due date to allow time for the applicant to receive an application acceptance message and to correct in a timely fashion any problems that may arise, such as missing or incomplete forms.

Questions related to the SJI Grant Program or the SJI GMS should be directed to *contact@sji.gov.*

III. The Mission of the State Justice Institute

The State Justice Institute Authorization Act of 1984 (42 U.S.C. 10701 *et seq.*) established SJI to improve the administration of justice in the state courts of the United States. Incorporated in the state of Virginia as a private, nonprofit corporation, SJI is charged, by statute, with the responsibility to:

- direct a national program of financial assistance designed to ensure that each citizen of the United States is provided ready access to a fair and effective system of justice;
- foster coordination and cooperation with the federal judiciary;
- promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and
- encourage education for judges and support personnel of state court systems through national and state organizations.

To accomplish these broad objectives, SJI is authorized to provide funding to state courts, national organizations that support and are supported by state courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the state courts.

Through the award of grants, contracts, and cooperative agreements, SJI is authorized to perform the following activities:

- support technical assistance, demonstrations, special projects, research, and training to improve the administration of justice in the state courts;
- provide for the preparation, publication, and dissemination of information regarding State judicial systems;
- participate in joint projects with Federal agencies and other private grantors;
- evaluate or provide for the evaluation of programs and projects to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the state courts;
- encourage and assist in furthering judicial education; and
- encourage, assist, and serve in a consulting capacity state and local courts in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services.

SJI is supervised by a board of directors appointed by the U.S. President, with the advice and consent of the U.S. Senate. The SJI Board of Directors is statutorily composed of six judges; a State court administrator; and four members of the public, no more than two of the same political party. Additional information about SJI, including a list of members of the SJI Board of Directors, is available at *https://www.sji.gov.*

a. Priority Investment Areas

The SJI Board of Directors has established Priority Investment Areas for grant funding. SJI will allocate significant financial resources through grant-making for these Priority Investment Areas. The Priority Investment Areas are applicable to all grant types. SJI strongly encourages potential grant applicants to consider projects addressing one or more of these Priority Investment Areas and to integrate the following factors into each proposed project:

- evidence-based, data-driven decision-making;
- cross-sector collaboration;
- systemic approaches (as opposed to standalone programs);
- institutionalization of new court processes and procedures;
- ease of replication; and
- sustainability.

For FY 2024, the Priority Investment Areas are listed below in no specific order.

1. Opioids and Other Dangerous Drugs and Behavioral Health Responses

- *Behavioral Health Disparities*—Research indicates that justice-involved persons have significantly greater proportions of mental, substance use, and co-occurring disorders than are found in the public. SJI supports cross-sector collaboration and information sharing that emphasizes policies and practices designed to improve court responses to justice-involved persons with behavioral health and other co-occurring needs.
- *Trauma-Informed Approaches*—Judges, court staff, system stakeholders, and court-involved persons (*e.g.,* defendants, respondents, and victims) alike may be impacted by prior trauma. This is particularly, but not exclusively, true for those with mental illness and/or substance use disorders. SJI supports trauma-informed training, policies, and practices in all aspects of the judicial process.

2. Promoting Access to Justice and Procedural Fairness

- *Self-Represented Litigation*—SJI promotes court-based solutions to address increases in self-represented litigants; helps make courts more user-friendly by simplifying court forms; provides one-on-one assistance; develops guides, handbooks, and instructions on how to proceed; develops court-based self-help centers; and uses internet technologies to increase access. These projects are improving outcomes for litigants and saving valuable court resources.
- *Language Access*—SJI supports language access in the state courts through remote interpretation (*i.e.,* outside the courtroom), interpreter training and certification, courtroom services (plain language forms, websites, etc.), and addressing the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) and the Omnibus Crime Control and Safe Streets Act (34 U.S.C. 10101 *et seq.*).
- *Procedural Fairness*—A fundamental role of courts is to ensure fair processes and just outcomes for litigants. SJI promotes the integration of

research-based procedural fairness principles, policies, and practices into state court operations to increase public trust and confidence in the court system, reduce recidivism, and increase compliance with court orders.

3. Reducing Disparities and Protecting Victims, Underserved, and Vulnerable Populations

- *Disparities in Justice*—SJI supports research and data-driven approaches that examine statutory requirements, policies, and practices that result in disparities for justice-involved persons. These disparities can be because of inequities in socioeconomic, racial, ethnic, gender, age, health, or other factors. In addition to identifying disparities, SJI promotes systemic approaches to reducing disparities.
- *Human Trafficking*—SJI addresses the impact of federal and state human-trafficking laws on the state courts and the challenges faced by state courts in dealing with cases involving trafficking victims and their families. These efforts are intended to empower state courts to identify victims, link them with vital services, and hold traffickers accountable.
- *Rural Justice*—Rural areas and their justice systems routinely have fewer resources and more barriers—such as unavailability of services, lack of transportation, and smaller workforces—than their urban counterparts. Programs and practices that are effective in urban areas are often inappropriate and/or lack supported research for implementation in rural areas. SJI supports rural courts by identifying promising and best practices and promoting resources, education, and training opportunities that are uniquely designed for rural courts and court users.
- *Guardianship, Conservatorship, and Elder Issues*—SJI assists courts in improving court oversight of guardians and conservators for the elderly and incapacitated adults through visitor programs, electronic reporting, and training.

4. Advancing Justice Reform

- *Criminal Justice Reform*—SJI assists state courts in taking a leadership role in reviewing fines, fees, and bail practices to ensure processes are fair and access to justice is assured; implements alternative forms of sanction; develops processes for indigency review; promotes transparency, governance, and structural reforms that promote access to justice, accountability, and oversight; and implements innovative diversion and reentry programs that serve to improve outcomes for justice-involved persons and the justice system.
- *Juvenile Justice Reform*—SJI supports innovative projects that advance best practices in handling dependency and delinquency cases, promote effective court oversight of juveniles in the justice system, address the impact of trauma on juvenile behavior, assist the courts in identification of appropriate provision of services for juveniles, and address juvenile reentry.
- *Family and Civil Justice Reform*—SJI promotes court-based solutions for the myriad of civil case types, such as domestic relations, housing, employment, and debt collection, which are overwhelming court dockets.

5. Transforming Courts

- *Emergency Response and Recovery*—Courts must be prepared for natural disasters and public health emergencies and institutionalize the most effective and efficient practices and processes that evolve during response and recovery. SJI supports projects that look to the future of judicial service delivery by identifying and replicating innovations and alternate means of conducting court business due to public health emergencies, such as pandemics and natural disasters (*e.g.,* hurricanes, earthquakes, and wildfires).
- *Cybersecurity*—Courts must also be prepared for cyberattacks on court systems, such as denial of service and ransomware attacks on court case management systems, websites, and other critical information technology infrastructure. SJI supports projects that assist courts in preparing for and responding to these attacks and shares lessons learned to courts across the United States.
- *Technology*—Courts must integrate technological advances into daily judicial processes and proceedings. SJI supports projects that institutionalize the innovative technology that has successfully advanced the use of electronic filing and payment systems, online dispute resolution, remote work, and virtual court proceedings. SJI promotes projects that streamline case filing and management processes, thereby reducing time and costs to litigants and the courts; provide online access to courts to litigants so that disputes can be resolved more efficiently; and make structural changes to court services that enable them to evolve into an online environment. Additionally, SJI supports the examination of potential integration of Artificial Intelligence (AI) into court processes, including identification of positive outcomes and potential limitations of AI.
- *Strategic Planning*—Courts must rely on a deliberate process to determine organizational values, mission, vision, goals, and objectives. SJI promotes structured planning processes and organizational assessments to assist courts in setting priorities, allocating resources, and identifying areas for ongoing improvements in efficiency and effectiveness. Strategic planning includes elements of court governance, data collection, management, analysis, sharing, and sustainable court governance models that drive decision-making. Strategic plans and outcomes must be communicated to judges, court staff, justice partners, and the public.
- *Training, Education, and Workforce Development*—State courts require a workforce that is adaptable to public demands for services. SJI supports projects that focus on the tools needed to enable judges, court managers, and staff to be innovative, forward-thinking court leaders.

IV. Grant Types

SJI supports five types of grants: Project, Technical Assistance (TA), Curriculum Adaptation and Training (CAT), Strategic Initiatives Grants (SIG) Program, and the Education Support Program (ESP). A brief description of each type of grant is below.

a. Project Grant

Project grants are intended to support innovative education and training, research and evaluation, demonstration, and TA projects that can improve the administration of justice in state courts locally or nationwide. State court and national nonprofit applicants may request up to $300,000 for 36 months. Local court applicants may request up to $200,000 for 24 months. Examples of expenses not covered by project grants include the salaries, benefits, or travel of full- or part-time court employees. Funding may not be used for the ordinary, routine operations of court systems.

All applicants for project grants must contribute a cash match greater than or equal to the SJI award amount. This means that grant awards by SJI must be matched at least dollar for dollar by grant applicants. For example, an applicant seeking a $300,000 Project Grant must provide a cash match of at least $300,000. Applicants may contribute the required cash match directly or in cooperation with third parties. Funding from other federal departments or agencies may not be used for a cash match.

b. TA Grant

TA grants are intended to provide state or local courts—or regional court associations—with sufficient support to obtain expert assistance to diagnose a problem, develop a response to that problem, and implement any needed changes. TA grants may not exceed $75,000 or 12 months in duration. In calculating project duration, applicants are cautioned to fully consider the time required to issue a request for proposals, negotiate a contract with the selected provider, and execute the project. Funds may not be used for salaries, benefits, or travel of full- or part-time court employees.

Applicants for TA grants are required to contribute a total match (cash and in-kind) of no less than 50 percent of the SJI award amount, of which 20 percent must be cash. For example, an applicant seeking a $75,000 TA Grant must provide a $37,500 match, of which up to $30,000 can be in-kind and not less than $7,500 must be cash. Funding from other federal departments and agencies may not be used for a cash match.

c. CAT Grant

CAT grants are intended to: (1) enable courts or national court associations to modify and adapt model curricula, course modules, or conference programs to meet states' or local jurisdictions' educational needs; train instructors to present portions or all of the curricula; and pilot-test them to determine their appropriateness, quality, and effectiveness; or (2) conduct judicial branch education and training programs, led by either expert or in-house personnel, designed to prepare judges and court personnel for innovations, reforms, and/or new technologies recently adopted by grantee courts. CAT grants may not exceed $40,000 or 12 months in duration. Examples of expenses not covered by CAT grants include the salaries, benefits, or travel of full- or part-time court employees.

Applicants for CAT grants are required to contribute a total match (cash and in-kind) of not less than 50 percent of the SJI award amount, of which 20 percent must be cash. For example, an applicant seeking a $40,000 CAT grant must provide a $20,000 match, of which up to $16,000 can be in-kind and not less than $4,000 must be cash. Funding from other federal departments and agencies may not be used for a cash match.

d. SIG Program

The SIG Program provides SJI with the flexibility to address national court issues as they occur and develop solutions to those problems. This is an innovative approach where SJI uses its expertise and the expertise and knowledge of its grantees to address key issues facing state courts across the United States.

The funding is used for grants or contractual services and is handled at the discretion of the SJI Board of Directors and staff. SJI requires the submission of a concept paper prior to the full application process. *Only applicants that submit an approved concept paper will be invited to submit a full application for funding. Potential applicants are strongly encouraged to contact SJI prior to submitting a concept paper for guidance on this initial step.*

e. ESP for Judges and Court Managers

The ESP is intended to enhance the skills, knowledge, and abilities of state court judges and court managers by enabling them to attend out-of-state or enroll in online educational and training programs sponsored by national and state providers they could not otherwise attend or take online because of limited state, local, and personal budgets. The program covers only the cost of tuition up to a maximum of $1,000 per course.

The ESP is administered by the National Judicial College (NJC) and the National Center for State Courts (NCSC)/Institute for Court Management (ICM), in partnership with SJI. For NJC courses, register online at *https://www.judges.org/courses.* For ICM courses, register online at *https://www.ncsc.org/education-and-careers/icm-courses.* During the respective registration processes, each website will ask whether a scholarship is needed to participate. Follow the online instructions to request tuition assistance.

V. Application and Submission Information

This section describes in detail what an application must include. An applicant should anticipate that if he or she fails to submit an application that contains all the specified project components, it may negatively affect the review of the application. Applicants must use the SJI GMS to submit all applications and post-award documents. The SJI GMS is accessible at *https://gms.sji.gov.*

a. Application Components

Applicants for SJI grants must submit the following forms and/or documents via the SJI GMS:

1. Application Form (Form A)

The application form requests basic information regarding the proposed project, the applicant, and the total amount of funding requested from SJI. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete; submission of the application has been authorized by the applicant; and, if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D in section V.A.4, *Assurances (Form D)* of this guideline.

2. Certificate of State Approval (Form B)

An application from a state or local court must include a copy of Form B signed by the state's chief justice or state court administrator. The signature denotes that the proposed project has been approved by the state's highest court or the agency or council it has designated. Further, the signature denotes, if applicable, a cash match reduction has been requested, and that if SJI approves funding for the project, the court or the specified designee will receive, administer, and be accountable for the awarded funds.

3. Budget Form (Form C)

Applicants must provide a detailed budget and a budget narrative providing an explanation of the basis for the amounts in each budget category. If funds from other sources are required to conduct the project, either as a match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

4. Assurances (Form D)

Form D lists the statutory, regulatory, and policy requirements with which recipients of SJI funds must comply.

5. Disclosure of Lobbying Activities (Form E)

Applicants other than units of state or local government are required to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts.

6. Project Abstract

The abstract must highlight the purposes, goals, methods, and anticipated benefits of the proposed project. It must not exceed one single-

spaced page and must be uploaded on the ''Attachments'' tab in the SJI GMS.

7. Program Narrative

The program narrative for an application may not exceed 25 double-spaced pages on 8½- by 11-inch paper with 1-inch margins, using a standard 12-point font. The pages must be numbered. This page limit does not include the forms, the abstract, the budget narrative, or any additional attachments. The program narrative must address the following, noting any specific areas to address by grant type:

i. Statement of Need. Applicants must explain the critical need they are facing and how SJI funds will enable them to meet this critical need. The applicants must also explain why state or local resources are not sufficient to fully support the costs of the project.

Applicants must provide a verified source for the data (*i.e.,* federal, state, and local databases) that supports the problem statement. The discussion must include specific references to the relevant literature and to the experience in the field. SJI continues to make all grant reports and most grant products available online through the NCSC Library and Digital Archive. Applicants are required to conduct a search of the NCSC Library and Digital Archive on the topic areas they are addressing. This search must include SJI-funded grants and previous projects not supported by SJI. Searches for SJI grant reports and other state court resources begin with the NCSC Library section. Applicants must discuss the results of their research, how they plan to incorporate the previous work into their proposed project, and if the project will differ from prior work.

ii. Project Grants. If the project is to be conducted in any specific location(s), applicants must discuss the particular needs of the project site(s) the project would address and why existing programs, procedures, services, or other resources do not meet those needs.

If the project is not site-specific, the applicants must discuss the problems that the proposed project would address and why existing programs, procedures, services, or other resources cannot adequately resolve those problems. In addition, applicants must describe how, if applicable, the project will be sustained in the future through existing resources.

iii. TA Grants. Applicants must explain why state or local resources are unable to fully support the modification and presentation of the model curriculum. The applicants must also describe the potential for replicating or integrating the adapted curriculum in the future using state or local funds once it has been successfully adapted and tested. In addition, applicants must describe how, if applicable, the project will be sustained in the future through existing resources.

iv. CAT Grants (curriculum adaptation). Applicants must explain why state or local resources are unable to fully support the modification and presentation of the model curriculum. The applicants must also describe the potential for replicating or integrating the adapted curriculum in the future using state or local funds once it has been successfully adapted and tested.

v. CAT Grants (training). Applicants must describe the court reform or initiative prompting the need for training. Applicants must also discuss how the proposed training will help them implement planned changes at the court and why state or local resources are not sufficient to fully support the costs of the required training.

vi. SIGs. Applicants must detail the origin of the project (*i.e.,* requested by SJI or a request to SJI) and provide a detailed description of the issue of national impact the proposed project will address, including any evaluations, reports, resolutions, or other data to support the need statement.

b. Project Description and Objectives

The applicants must include a clear, concise statement of what the proposed project is intended to accomplish and how those objectives will be met. Applicants must delineate the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task.

Applicants must describe how the proposed project addresses one or more Priority Investment Areas. If the project does not address one or more Priority Investment Areas, the applicants must provide an explanation as to the reason.

1. Application Details by Project Type

i. Project Grants. The applicants must include detailed descriptions of tasks, methods, and evaluations. For example:

- *Research and evaluation projects.* The applicants must include the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods must address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and protecting others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to human subjects, a discussion must be included that explains the value of the proposed research and the methods to be used to minimize or eliminate such risk. Refer to section VIII.R.3, *Human Subject Protection* of this guideline for additional information.
- *Education and training projects.* The applicants must include the adult education techniques to be used in designing and presenting the program, including the teaching and learning objectives of the educational design, the teaching methods to be used, and the opportunities for structured interaction among the participants. The opportunities applicants must include are: how faculty would be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars, or workshops to be conducted and the estimated number of persons who would attend them; the materials to be provided and how they would be developed; and the cost to participants.
- *Demonstration projects.* The applicants must include the demonstration sites and the reasons they were selected or, if the sites have not been chosen, how they would be identified; how the applicants would obtain the cooperation of demonstration sites; and how the program or procedures would be implemented and monitored.
- *TA projects.* The applicants must explain the types of assistance that would be provided, the particular issues and problems for which assistance would be provided, the type of assistance determined, how suitable providers would be selected and briefed, and how reports would be reviewed.

ii. TA Grants. Applicants must identify which organization or individual will be hired to provide the assistance and how the consultant was selected. The applicants must describe the tasks the consultant will perform and how the tasks will be accomplished.

If a consultant has not yet been identified, the applicants must describe the procedures and criteria that will be used to select the consultant (applicants are expected to follow their jurisdictions' normal procedures for procuring consultant services).

If the consultant has been identified, the applicants must provide a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed timeframe and for the proposed cost.

The consultant must agree to submit a detailed written report to the court and SJI upon completion of the TA. Applicants must then describe the steps that have been or will be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance.

The applicants must then address the following questions:

- What specific tasks will the consultant and court staff undertake?
- What is the schedule for completion of each required task and the entire project?
- How will the applicant oversee the project and provide guidance to the consultant, and who at the court or regional court association would be responsible for coordinating all project tasks and submitting Quarterly Progress and Financial Status Reports?

iii. CAT Grants (curriculum adaptation). The applicants must provide the title of the curriculum that will be adapted and identify the entity that originally developed the curriculum. Applicants must allow at least 90 days between the potential award date and the date of the proposed program to allow sufficient time for planning. This period of time should be reflected in the project timeline. The applicants must also address the following questions:

- Why is this education program needed at the present time?
- What are the project's goals?
- What are the learning objectives of the adapted curriculum?
- What program components would be implemented, and what types of modifications, if any, are anticipated in length, format, learning objectives, teaching methods, or content?
- Who would be responsible for adapting the model curriculum?
- Who would the participants be, how many would there be, how would they be recruited, and from where would they come (*e.g.,* from a single local jurisdiction, from across the state, from a multistate region, from across the nation, etc.)?

The applicants must also provide the proposed timeline, including the project start and end dates, the date(s) the judicial branch education program will be presented, and the process that will be used to modify and present the program. Applicants must also identify who will serve as faculty, and how they will be selected, in addition to the measures taken to facilitate subsequent presentations of the program.

iv. CAT Grants (training). The applicants must identify the tasks the trainer will be expected to perform, which organization or individual will be hired, and, if in-house personnel are not the trainer, how the trainer will be selected.

If a trainer has not yet been identified, the applicants must describe the procedures and criteria that will be used to select the trainer.

If the trainer has been identified, the applicants must provide a letter from that individual or organization documenting interest in and availability for the project, as well as the trainer's ability to complete the assignment within the proposed timeframe and for the proposed cost.

In addition, the applicants must address the following questions:

- What specific tasks would the trainer and court staff or regional court association members undertake?
- What presentation methods will be used?
- What is the schedule for completion of each required task and the entire project?
- How will the applicant oversee the project and provide guidance to the trainer, and who at the court or affiliated with the regional court association would be responsible for coordinating all project tasks and submitting Quarterly Progress and Financial Status Reports?
- The applicant must explain what steps have been or will be taken to coordinate the implementation of the training. For example, if the support or cooperation of specific court, regional court association officials, committees, other agencies, funding bodies, organizations, or a court other than the applicant will be needed to adopt the reform and initiate the proposed training, how will the applicant secure their involvement in the development and implementation of the training?

v. SIGs. The applicants should expand upon the project description and objectives described in the approved concept paper. Any and all feedback and questions submitted by the SJI Board of Directors and staff during the review of the concept paper should also be incorporated into the project design.

2. Dissemination Plan

The application must: (1) explain how and to whom the products would be disseminated; describe how they would benefit the state courts, including how they could be used by judges and court personnel; (2) identify development, production, and dissemination costs covered by the project budget; and (3) present the basis on which products and services developed or provided under the grant would be offered to the court community and the public at large (*i.e.,* whether products would be distributed at no cost to recipients, or if costs are involved, the reason for charging recipients and the estimated price of the product). Ordinarily, applicants must schedule all product preparation and distribution activities within the project period.

The type of product to be prepared depends on the nature of the project. For example, in most instances, the products of a research, evaluation, or demonstration project must include: (1) an article summarizing the project findings that is publishable in a journal serving the courts community nationally, (2) an executive summary that would be disseminated to the project's primary audience, or (3) both an article and executive summary. Applicants proposing to conduct empirical research or evaluation projects with national import must describe how they would make their data available for secondary analysis after the grant period.

The curricula and other products developed through education and training projects must be designed for use by others and again by the original participants in the course of their duties. Applicants proposing to develop web-based products must provide, for sending, a notice and description of the document (*i.e.,* a written report with a reference to the website) to the appropriate audiences to alert them to the availability of the website or electronic product.

Applicants must submit a final draft of all written grant products to SJI for review and approval at least 30 days before the products are submitted for publication or reproduction. Applicants must provide multimedia products for SJI review at the treatment, script, rough-cut, and final stages of development, or their equivalents. No grant funds may be obligated for publication or reproduction of a final grant product without the written approval of SJI. Project products should be submitted to SJI electronically in HTML or PDF format.

Applicants must also include in all project products a prominent acknowledgment that SJI provided support and a disclaimer paragraph such as, ''This [document, film, videotape, etc.] was developed under [grant/cooperative agreement] number SJI–[insert number] from the State Justice Institute. The points of view expressed are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute.'' The ''SJI'' logo must appear on the front cover of a written product or in the opening frames of a website or

other multimedia products, unless SJI approves another placement. The SJI logo can be downloaded from SJI's website (*https://www.sji.gov*) at the bottom of the ''Grants'' page.

3. Staff Capability and Organizational Capacity

An applicant that is not a state or local court and has not received a grant from SJI within the past 3 years must indicate whether it is either: (1) a national nonprofit organization controlled by, operating in conjunction with, and serving the judicial branches of state governments, or (2) a national nonprofit organization for the education and training of state court judges and support personnel. If the applicant is a nonjudicial unit of Federal, State, or local government, it must explain whether the proposed services could be adequately provided by nongovernmental entities.

Applicants that have not received a grant from SJI within the past 3 years must include a statement describing their capacity to administer grant funds, including the financial systems used to monitor project expenditures (and income, if any), a summary of their past experience in administering grants, and any resources or capabilities they have that would particularly assist in the successful completion of the project.

Unless requested otherwise, an applicant that has received a grant from SJI within the past 3 years must describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant. If the applicant is a nonprofit organization (other than a university), it must also provide documentation of its 501(c)(3) tax-exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For the purpose of this requirement, ''current'' means no earlier than 2 years prior to the present calendar year.

The applicant must include a summary of key staff members' and consultants' training and experience that qualify them to conduct and manage the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that would be used to select persons for these positions should be included. The applicant must also identify the person who would be responsible for managing and reporting on the financial aspects of the proposed project.

4. Evaluation

Projects must include an evaluation plan to determine whether the project has met its objectives. The evaluation must be designed to provide an objective and independent assessment of the effectiveness or usefulness of the training or services provided; the impact of the procedures, technology, or services tested; or the validity and applicability of the research conducted. The evaluation plan must be appropriate to the type of project proposed, considering the nature, scope, and magnitude of the project.

5. Sustainability

Describe how the project will be sustained after SJI assistance ends. The sustainability plan must describe how current collaborations and evaluations will be used to leverage ongoing resources. SJI encourages applicants to ensure sustainability by coordinating with local, state, and other federal resources.

c. Budget and Matching State Contribution

Applicants must complete a budget in the SJI GMS and upload a budget narrative. The budget narrative must provide the basis for all project-related costs and the sources of any match, as required. The budget narrative must thoroughly and clearly describe every category of expense listed. SJI expects proposed budgets to be complete, cost effective, and allowable (*i.e.,* reasonable, allocable, and necessary for project activities).

1. Prohibited Uses of SJI Funds. To ensure that funds made available are used to supplement and improve the operation of state courts, rather than to support basic court services, funds shall not be used:

- To supplant state or local funds supporting a program or activity (*e.g.,* paying the salary of court employees who would be performing their normal duties as part of the project or paying rent for space that is part of the court's normal operations).
- To construct court facilities or structures.
- Solely to purchase equipment.

Examples of *basic court services* include:

- Hiring of personnel
- Purchase and/or maintenance of equipment
- Purchase of software and/or licenses
- Purchase of internet access or service
- Supplies to support the day-to-day operations of courts

The final determination of what constitutes basic court services is made by SJI and is not negotiable.

Meals and refreshments are generally not allowable costs unless the applicant or grantee obtains *prior* written approval from SJI. This applies to all awards, including contracts, grants, and cooperative agreements. In general, SJI may approve such costs only in very rare instances where:

- sustenance is not otherwise available (*e.g.,* in extremely remote areas);
- the size of the event and nearby food and/or beverage vendors would make it impractical to not provide meals and/or refreshments; and/or
- a special presentation at a conference requires a plenary address where there is no other time for sustenance to be obtained.

Trinkets (*e.g.,* items such as hats, mugs, portfolios, t-shirts, coins, gift bags, gift cards, etc.) may not be purchased with SJI grant funding.

2. Justification of Personnel Compensation. The applicants must set forth the amount of time the individuals who would staff the proposed project would devote, the annual salary of each of those persons, and the number of workdays per year used to calculate the amount of time or daily rates of those individuals. The applicants must explain any deviations from current rates or established written organizational policies. No grant funds or cash match may be used to pay the salary and related costs for a current or new employee of a court or other unit of government because such funds would constitute a supplantation of state or local funds in violation of 42 U.S.C. 10706(d)(1); this includes new employees hired specifically for the project. The salary and any related costs for a current or new employee of a court or other unit of government may only be accepted as an in-kind match.

3. Fringe Benefit Computation. For nongovernmental entities, applicants must provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented, as well as a description of the elements included in the determination of the percentage rate.

4. Consultant/Contractual Services and Honoraria. The applicants must describe the tasks each consultant would perform, the estimated total amount to be paid to each consultant, the basis for compensation rates (*e.g.,* the number of days multiplied by the daily consultant rates), and the method for selection. Prior written SJI approval is required for any consultant rate in excess of $800 per day; SJI funds may not be used to pay a consultant more than $1,100 per day. Honorarium

payments must be justified in the same manner as consultant payments.

5. Travel. Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates must be consistent with those established by the Federal Government. The budget narrative must include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose of the travel must also be included in the narrative.

6. Equipment. Grant funds may be used to purchase only the equipment necessary to demonstrate a new technological application in a court or that is otherwise essential to accomplishing the objectives of the project. In other words, grant funds cannot be used strictly for the purpose of purchasing equipment. Equipment purchases to support basic court operations will not be approved. Applicants must describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative must clearly identify which equipment is to be leased and which is to be purchased. The method of procurement must also be described.

7. Supplies. Applicants must provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicants must provide the basis for the amount requested for this expenditure category.

8. Construction. Construction expenses are prohibited.

9. Postage. Anticipated postage costs for project-related mailings, including distribution of the final product(s), should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine mailing costs. The bases for all postage estimates should be included in the budget narrative.

10. Printing/Photocopying. Anticipated costs for printing or photocopying project documents, reports, and publications must be included in the budget narrative, along with the bases used to calculate these estimates.

11. Indirect Costs. Indirect costs are only applicable to organizations that are not state courts or government agencies. Recoverable indirect costs are limited to no more than 75 percent of a grantee's direct personnel costs (*i.e.,* salaries plus fringe benefits). Applicants must describe the indirect cost rates applicable to the grant in detail. If costs often included within an indirect cost rate are charged directly (*e.g.,* a percentage of the time of senior managers to supervise project activities), the applicants should specify that these costs are not included within their approved indirect cost rate. If an applicant has an indirect cost rate or allocation plan approved by any federal granting agency, a copy of the approved rate agreement must be attached to the application.

12. Matching Requirements. SJI grants require a match, which is the portion of project costs not borne by SJI and includes both cash and in-kind matches as outlined in this paragraph. A cash match is the direct outlay of funds by the grantee or a third party to support the project. Other federal department and agency funding may not be used for a cash match. An in-kind match consists of contributions of time and/or services of current staff members, new employees, space, supplies, etc., that are made to the project by the grantee or others (*e.g.,* advisory board members) working directly on the project. An in-kind match can also consist of that portion of the grantee's federally approved indirect cost rate that exceeds the limit of permitted charges (75 percent of salaries and benefits).

The grantee is responsible for ensuring that the total amount of the match proposed is contributed. If a proposed contribution is not fully met, SJI may reduce the award amount accordingly, to maintain the ratio originally provided for in the award agreement. The match should be expended at the same rate as SJI funding.

i. Project Grants. Applicants for Project grants must contribute a cash match greater than or equal to the SJI award amount. This means that grant awards by SJI must be matched at least dollar for dollar by grant applicants. For example, an applicant seeking a $300,000 Project grant must provide a cash match of at least $300,000. Applicants may contribute the required cash match directly or in cooperation with third parties.

ii. TA Grants. Applicants for TA grants are required to contribute a total match (cash and in-kind) of no less than 50 percent of the SJI award amount, of which 20 percent must be cash. For example, an applicant seeking a $75,000 TA grant must provide a $37,500 match, of which up to $30,000 can be in-kind and not less than $7,500 must be cash.

iii. CAT Grants. Applicants for CAT grants are required to contribute a total match (cash and in-kind) of not less than 50 percent of the SJI award amount, of which 20 percent must be cash. For example, an applicant seeking a $40,000 CAT grant must provide a $20,000 match, of which up to $16,000 can be in-kind and not less than $4,000 must be cash. Funding from other federal departments and agencies may not be used for a cash match.

iv. SIGs. State and local courts and non-court units of government must provide a dollar-for-dollar cash match for SIG projects. Matching funds may not be required for SIG projects that are awarded to non-court or nongovernmental entities.

13. Letters of Support. Written assurances of support or cooperation should accompany the application letter if the support or cooperation of agencies, funding bodies, organizations, or courts other than the applicant would be needed in order for the consultant to perform the required tasks. Applicants may also submit memorandums of agreement or understanding, as appropriate.

14. Project Timeline. A project timeline detailing each project objective, activity, expected completion date, and responsible person or organization should be included. The plan should include the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that would ensure that all tasks are performed on time, within budget, and at the highest level of quality. In preparing the project timeline, applicants must make certain that all project activities, including publication or reproduction of project products and their initial dissemination, would occur within the proposed project period. The project timeline must also provide for the submission of Quarterly Progress and Financial Status Reports within 30 days after the close of each calendar quarter, as well as submission of all final closeout documents. The project timeline may be included in the program narrative or provided as a separate attachment.

15. Other Attachments. Resumes of key project staff may also be included. Additional background material should be attached only if it is essential to impart a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

d. Application Review Information

1. Selection Criteria. In addition to the criteria detailed below, SJI will consider whether the applicant is a state or local court, a national court support or education organization, a non-court unit

of government, or other type of entity eligible to receive grants under SJI's enabling legislation; the availability of financial assistance from other sources for the project; the diversity of subject matter; geographic diversity; the level and nature of the match that would be provided; reasonableness of the proposed budget; the extent to which the proposed project would also benefit the federal courts or help state or local courts enforce federal constitutional and legislative requirements; and the level of appropriations available to SJI in the current year and the amount expected to be available in succeeding fiscal years, when determining which projects to support.

2. Project Grant Applications. Project grant applications will be rated based on the criteria set forth below:

- Soundness of the methodology.
- Demonstration of need for the project.
- Appropriateness of the proposed evaluation design.
- If applicable, the key findings and recommendations of the most recent evaluation and the proposed responses to those findings and recommendations.
- Applicant's management plan and organizational capabilities.
- Qualifications of the project's staff.
- Products and benefits resulting from the project, including the extent to which the project will have long-term benefits for State courts across the nation.
- Degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.
- Reasonableness of the proposed budget.
- Demonstration of cooperation and support of other agencies that may be affected by the project.

3. TA Grant Applications. TA grant applications will be rated based on the following criteria:

- Whether the assistance would address a critical need of the applicant.
- Soundness of the technical assistance approach to the problem.
- Qualifications of the consultant(s) to be hired or the specific criteria that will be used to select the consultant(s).
- Commitment of the court or association to act on the consultant's recommendations.
- Reasonableness of the proposed budget.

4. CAT Grant Applications. CAT grant applications will be rated based on the following criteria:

- Goals and objectives of the proposed project.
- How the training would address a critical need of the court or association.
- Need for outside funding to support the program.
- Soundness of the approach in achieving the project's educational or training objectives.
- Integration of distance learning and technology in project design and delivery.
- Qualifications of the trainer(s) to be hired or the specific criteria that will be used to select the trainer(s) (training project only).
- Likelihood of effective implementation and integration of the modified curriculum into the state or local jurisdiction's ongoing educational programming (curriculum adaptation project only).
- Commitment of the court or association to the training program (training project only).
- Expressions of interest by judges and/or court personnel, as demonstrated by letters of support.

5. SIG Applications. SIG applications will be rated based on the following criteria:

- Goals and objectives of the proposed project.
- Demonstration of need for the project.
- Degree to which the project addresses a current national court issue.
- Level of innovation in addressing the identified need.
- Potential impact on the court community.
- Qualifications of the consultant(s) engaged to manage the project.

6. Review Process. SJI reviews the application to make sure that the information presented is reasonable, understandable, measurable, and achievable, as well as consistent with this guideline. Applications must meet basic minimum requirements. Although specific requirements may vary by grant type, the following are common requirements applicable to all SJI grant applications:

- Must be submitted by an eligible type of applicant.
- Must request funding within funding constraints of each grant type (if applicable).
- Must be within statutorily allowable expenditures.
- Must include all required forms and documents.
- The SJI Board of Directors reviews all applications and makes final funding decisions. The decision to fund a project is solely that of the SJI Board of Directors.

7. Notification of SJI Board of Directors Decision. The Chairman of the Board signs grant awards on behalf of SJI. SJI will notify applicants regarding the SJI Board of Directors' decisions to award, defer, or deny their respective applications. If requested, SJI conveys the key issues and questions that arose during the review process. A decision by the SJI Board of Directors to deny an application may not be appealed, but it does not prohibit resubmission of a proposal in a subsequent funding cycle.

8. Response to Notification of Award. Grantees have 30 days from the date they were notified about their award to respond to any revisions requested by the SJI Board of Directors. If the requested revisions (or a reasonable schedule for submitting such revisions) have not been submitted to SJI within 30 days after notification, the award may be rescinded, and the application presented to the SJI Board of Directors for reconsideration. Special conditions, in the form of incentives or sanctions, may also be used in other situations.

VI. How To Apply

Applicants must use the SJI GMS to submit all applications and post-award documents. SJI urges applicants to submit applications at least 72 hours prior to the application due date in order to allow time for the applicant to receive an application acceptance message and to correct, in a timely fashion, any problems that may arise, such as missing or incomplete forms. Files must be in .doc, .docx, .xls, .xlsx, .pdf, .jpg, or .png format. Individual file size cannot exceed 5 MB.

a. Submission Steps

Applicants (except for ESP) must register with the SJI GMS to submit applications for funding consideration. Below are the basic steps for submission:

1. Access the SJI GMS and complete the information required to create an account.

2. If you already have an account, log in and create a new application.

3. Complete all required forms and upload all required documents:

- Application Form.
- Certificate of State Approval.
- Budget and Budget Narrative.
- Assurances.
- Disclosure of Lobbying Activities.
- Project Abstract.
- Program Narrative.
- Attachments.
  - Letters of Support.
  - Project Timeline.
  - Resumes.
  - Indirect Cost Approval.
  - Other Attachments.

4. Certify and submit the application to SJI for review.

VII. Post-Award Reporting Requirements

All required reports and documents must be submitted via the SJI GMS.

a. Quarterly Reporting Requirements

Recipients of SJI funds must submit Quarterly Progress and Financial Status Reports within 30 days after the close of each calendar quarter (*i.e.,* no later than January 30, April 30, July 30, and October 30).

1. Program Progress Reports. Program Progress Reports must include a narrative description of project activities during the calendar quarter; the relationship between those activities, the task schedule, and objectives set forth in the approved application or an approved adjustment thereto; any significant problem areas that have developed and how they will be resolved; and the activities scheduled during the next reporting period. Failure to comply with the requirements of this provision could result in the termination of a grantee's award.

2. Financial Reporting. A Financial Status Report is required from all grantees for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to SJI funds, state and local matching shares, project income, and any other sources of funds for the project, as well as information on obligations and outlays.

b. Request for Reimbursement of Funds

Awardees will receive funds on a reimbursable, U.S. Department of the Treasury check-issued or electronic funds transfer (EFT) basis. Upon receipt, review, and approval of a Request for Reimbursement by SJI, payment will be issued directly to the grantee or its designated fiscal agent. Requests for reimbursements, along with the instructions for their preparation, and the SF 3881 Automated Clearing House (ACH/Miscellaneous Payment Enrollment Form for EFT) are available in the SJI GMS.

1. Accounting System. Awardees are responsible for establishing and maintaining an adequate system of accounting and internal controls. Awardees are also responsible for ensuring an adequate system exists for each of their subgrantees and contractors. An acceptable and adequate accounting system:

- Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income).
- Assures that expended funds are applied to the appropriate budget category included within the approved grant.
- Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes.
- Provides cost and property controls to assure optimal use of grant funds.
- Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant.
- Meets the prescribed requirements for periodic financial reporting of operations.
- Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

c. Final Progress Report

The Final Progress Report must describe the project activities during the final calendar quarter of the project and the close-out period, including to whom project products have been disseminated; provide a summary of activities during the entire project; specify whether all the objectives set forth in the approved application or an approved adjustment have been met and, if any of the objectives have not been met, explain why not; and discuss what, if anything, could have been done differently that might have enhanced the impact of the project or improved its operation. In addition, grantees are required to submit electronic copies of the final products related to the project (*e.g.,* reports, curriculum, etc.). These reporting requirements apply at the conclusion of every grant.

VIII. Compliance Requirements

a. Advocacy

No funds made available by SJI may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities (42 U.S.C. 10706(b)).

b. Approval of Key Staff

If the qualifications of an employee or consultant assigned to a key project staff position are not adequately described in the application or if there is a change of a person assigned to such a position, the recipient must submit a description of the qualifications of the newly assigned person to SJI. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from SJI before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds.

c. Audit

Recipients of SJI grants must provide for an annual fiscal audit, which includes an opinion on whether the financial statements of the grantee fairly present its financial position and its financial operations in accordance with generally accepted accounting principles. If requested, a copy of the audit report must be made available electronically to SJI.

d. Budget Revisions

Budget revisions among direct cost categories that: (1) transfer grant funds to an unbudgeted cost category, or (2) individually or cumulatively exceed 5 percent of the approved original budget or the most recently approved revised budget require prior SJI approval. Refer to section X, *Grant Adjustments,* of this guideline for additional details about the process for modifying the project budget.

e. Conflict of Interest

Personnel and other officials connected with SJI-funded programs must adhere to the following requirements:

- Officials or employees of a recipient court or organization must not participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which SJI funds are used, where, to their knowledge, they or their immediate family; partners; organization other than a public agency in which they are serving as officer, director, trustee, partner, or employee; or any person or organization with whom they are negotiating or have any arrangement concerning prospective employment have a financial interest.
- In the use of SJI project funds, an official or employee of a recipient court or organization must avoid any action that might result in or create the appearance of:
  - using an official position for private gain; or
  - adversely affecting the confidence of the public in the integrity of the SJI program.
- Requests for proposals (RFPs) or invitations for bids issued by a recipient of SJI funds or a subgrantee or

subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work, and/or RFPs for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

f. Inventions and Patents

If any patentable items, patent rights, processes, or inventions are produced during the course of SJI-sponsored work, such fact must be promptly and fully reported to SJI. Unless there is a prior agreement between the grantee and SJI on the disposition of such items, SJI will determine whether protection of the invention or discovery may be sought should the grantee choose to pursue such protection.

g. Lobbying

Funds awarded to recipients by SJI must not be used—directly or indirectly—to influence Executive Orders or similar promulgations by federal, state, or local agencies; or to influence the passage or defeat of any legislation by federal, state, or local legislative bodies (42 U.S.C. 10706(a)).

It is the policy of the SJI Board of Directors to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, SJI will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application.

h. Matching Requirements

All grant recipients are required to provide a match. A match is the portion of project costs not borne by SJI. A match includes both cash and in-kind contributions. A cash match is the direct outlay of funds by the grantee or a third party to support the project. An in-kind match for state and local courts or other units of government consists of contributions of time and/or services of current staff members, new employees, space, supplies, etc., made to the project by the grantee or others (*e.g.,* advisory board members) working directly on the project. Generally, these same items are considered cash matches for nongovernmental entities. For nongovernmental entities, a federally approved indirect cost rate may be used as an in-kind match for that portion of the rate that exceeds the limit of permitted charges for indirect costs (75 percent of salaries and benefits).

Under normal circumstances, an allowable match may be incurred only during the project period. The amount and nature of the required match depends on the type of grant. Refer to section V.C.12, *Matching Requirements,* of this guideline for details by grant type.

The grantee is responsible for ensuring that the total amount of the match proposed is contributed. If a proposed contribution is not fully met, SJI may reduce the award amount accordingly to maintain the ratio originally provided for in the award agreement. The match should be expended at the same rate as SJI funding.

The SJI Board of Directors looks favorably upon any unrequired match contributed by applicants when making grant decisions. The match requirement may be waived in exceptionally rare circumstances upon the request of the chief justice of the highest court in the state or the highest ranking official in the requesting organization, and approval by the SJI Board of Directors (42 U.S.C. 10705(d)). The SJI Board of Directors encourages all applicants to provide the maximum amount of cash and in-kind match possible, even if a waiver is approved. The amount and nature of the match are criteria in the grant selection process.

Other federal department and agency funding may not be used for a cash match.

i. Nondiscrimination

No person may, on the basis of race, sex, national origin, disability, color, or creed, be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by SJI funds. Recipients of SJI funds must take any measures necessary to effectuate this provision immediately.

j. Political Activities

No recipient may contribute or make available SJI funds, program personnel, or equipment to any political party or association or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Officers and employees of recipients must not intentionally identify SJI or recipients with any partisan or nonpartisan political activity associated with a political party or association or the campaign of any candidate for public or party office (42 U.S.C. 10706(a)).

k. Products

1. Acknowledgment, Logo, and Disclaimer. Recipients of SJI funds must acknowledge prominently on all products that were developed with grant funds that support was received from SJI. The SJI logo must appear on the front cover of a written product, or in the opening frames of a multimedia product, unless another placement is approved in writing by SJI. This includes final products printed or otherwise reproduced during the grant period as well as reprintings or reproductions of those materials following the end of the grant period. The SJI logo can be downloaded from SJI's website (*https://www.sji.gov*) at the bottom of the ''Grants'' page.

Recipients also must display the following disclaimer on all grant products: ''This [document, film, videotape, etc.] was developed under [grant/cooperative agreement] number SJI-[insert number] from the State Justice Institute. The points of view expressed are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute.''

i. Project Grants. In addition to other required grant products and reports, recipients must provide a one-page executive summary of the project. The summary should include a background on the project, the tasks undertaken, and the outcome. In addition, the summary should provide the performance metrics that were used during the project, and how performance will be measured in the future.

ii. TA Grants. Grantees must submit a final report that explains how they intend to act on the consultant's recommendations as well as a copy of the consultant's written report. Both should be submitted in electronic format.

iii. CAT Grants. Grantees must submit an electronic version of the agenda or schedule, an outline of presentations and/or relevant instructor's notes; copies of overhead transparencies, Microsoft PowerPoint presentations, or other visual aids; exercises, case studies, and other background materials; hypotheticals, quizzes, and other materials involving the participants; manuals, handbooks, conference packets, and evaluation forms; and suggestions for replicating the program, including possible faculty or the preferred qualifications or experience of those selected as faculty, developed under the grant after the grant period, along with a final report that includes any evaluation results and explains how

the grantee intends to present the educational program in the future, as well as the consultant's or trainer's report. All items should be submitted in electronic format.

2. Charges for Grant-Related Products/Recovery of Costs. SJI's mission is to support improvements in the quality of justice and foster innovative, efficient solutions to common issues faced by all courts. SJI has recognized and established procedures for supporting research and development of grant products (*e.g.,* a report, curriculum, video, software, database, or website) through competitive grant awards based on the merit reviews of proposed projects. To ensure that all grants benefit the entire court community, projects SJI considers worthy of support (in whole or in part) are required to be disseminated widely and to be available for public consumption. This includes open-source software and interfaces. Costs for development, production, and dissemination are allowable as direct costs to SJI.

Applicants must disclose their intent to sell grant-related products in the application. Grantees must obtain SJI's prior written approval of their plans to recover project costs through the sale of grant products. Written requests to recover costs ordinarily should be received during the grant period and should specify the nature and extent of the costs to be recouped, the reason that such costs were not budgeted (if the rationale was not disclosed in the approved application), the number of copies to be sold, the intended audience for the products to be sold, and the proposed sale price. If the product is to be sold for more than $25, the written request should also include a detailed itemization of costs that will be recovered and a certification that the costs were not supported by either SJI grant funds or grantee matching contributions.

In the event that the sale of grant products results in revenues that exceed the costs to develop, produce, and disseminate the product, the revenue must continue to be used for the authorized purposes of the SJI-funded project or other purposes consistent with the State Justice Institute Act that have been approved by SJI.

l. Copyrights

Except as otherwise provided in the terms and conditions of an SJI award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an SJI-supported project. SJI must reserve a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

m. Due Date

All products and, for TA and CAT grants, consultant and/or trainer reports are to be completed and distributed not later than the end of the award period, not the 90-day closeout period. The 90-day closeout period is intended only for grantee final reporting and to liquidate obligations.

n. Distribution

In addition to the distribution specified in the grant application, grantees must send an electronic version of all products in HTML or PDF format to SJI.

o. Original Material

All products prepared as the result of SJI-supported projects must be originally developed material unless otherwise specified in the award documents. Material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

p. Prohibition Against Litigation Support

No funds made available by SJI may be used directly or indirectly to support legal assistance for parties in litigation, including cases involving capital punishment.

q. Reporting Requirements

All reports must be submitted via the SJI GMS as detailed below:

1. Quarterly Progress and Financial Status Reports. Recipients of SJI funds must submit Quarterly Progress and Financial Status Reports within 30 days after the close of each calendar quarter (*i.e.,* no later than January 30, April 30, July 30, and October 30). The Quarterly Progress Reports must include a narrative description of project activities during the calendar quarter; the relationship between those activities, the task schedule, and objectives set forth in the approved application or an approved adjustment thereto; any significant problem areas that have developed and how they will be resolved; and the activities scheduled during the next reporting period. Failure to comply with the requirements of this provision could result in the termination of a grantee's award.

2. Quarterly Financial Reporting. The Quarterly Financial Report must be submitted in accordance with section VII.A.2, *Financial Reporting,* of this guideline. A Final Progress Report and Financial Status Report must be submitted within 90 days after the end of the grant period.

r. Research

1. Availability of Research Data for Secondary Analysis. Upon request, grantees must make available for secondary analysis backup files containing research and evaluation data collected under an SJI grant and the accompanying code manual. Grantees may recover the actual cost of duplicating and mailing, or otherwise transmitting, the dataset and manual from the person or organization requesting the data. Grantees may provide the requested dataset in the format in which it was created and analyzed.

2. Confidentiality of Information. Except as provided by federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof will be immune from legal process and must not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action; suit; or other judicial, legislative, or administrative proceedings.

3. Human Subject Protection. Human subjects are defined as individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions, and/or experiences through an interview, questionnaire, or other data collection technique. All research involving human subjects must be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it—unless such procedures and safeguards would make the research impractical. In such instances, SJI must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and minimize or eliminate risk or harm to those subjects due to their participation.

4. Prohibited Uses of SJI Funds. To ensure SJI funds are used to supplement and improve the operation of state courts, rather than to support basic

court services, SJI funds must not be used for the following purposes:

- To supplant state or local funds supporting a program or activity (*e.g.,* paying the salary of court employees who would be performing their normal duties as part of the project or paying rent for space which is part of the court's normal operations).
- To construct court facilities or structures.
- Solely to purchase equipment.

Examples of *basic court services* include:

- Hiring of personnel
- Purchase and/or maintenance of equipment
- Purchase of software and/or licenses
- Purchase of internet access or service
- Supplies to support the day-to-day operations of courts

The final determination of what constitutes basic court services is made by SJI and is not negotiable.

Meals and refreshments are generally not allowable costs unless the applicant or grantee obtains *prior* written approval from SJI. This applies to all awards, including contracts, grants, and cooperative agreements. In general, SJI may approve such costs only in very rare instances in which:

- sustenance is not otherwise available (*e.g.,* in extremely remote areas);
- the size of the event and nearby food and/or beverage vendors would make it impractical to not provide meals and/or refreshments; and/or
- a special presentation at a conference requires a plenary address where there is no other time for sustenance to be obtained.

Trinkets (*e.g.,* hats, mugs, portfolios, t-shirts, coins, gift bags, gift cards, etc.) may not be purchased with SJI grant funding.

5. Suspension or Termination of Funding. After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, SJI may terminate or suspend funding of a project that fails to substantially comply with the Act, the Grant Guideline, or the terms and conditions of the award (42 U.S.C. 10708(a)).

6. Title to Property. At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with SJI funds must vest in the recipient court, organization, or individual that purchased the property if certification is made to and approved by SJI that the property will continue to be used for the authorized purposes of the SJI-funded project or other purposes consistent with the State Justice Institute Act. If such certification is not made or SJI disapproves of such certification, title to all such property with an aggregate or individual value of $1,000 or more must vest in SJI, which will direct the disposition of the property.

IX. Financial Requirements

The purpose of this section is to establish accounting system requirements and offer guidance on procedures to assist all grantees, subgrantees, contractors, and other organizations in:

- Complying with the statutory requirements for the award, disbursement, and accounting of funds.
- Complying with regulatory requirements of SJI for the financial management and disposition of funds.
- Generating financial data to be used in planning, managing, and controlling projects.
- Facilitating an effective audit of funded programs and projects.

a. Supervision and Monitoring Responsibilities

All grantees receiving awards from SJI are responsible for the management and fiscal control of all funds. Responsibilities include accounting for receipts and expenditures, maintaining adequate financial records, and refunding expenditures disallowed by audits. If the project includes subawards, the grantees' responsibilities also include:

1. Reviewing Financial Operations. The grantee or its designee must be familiar with, and periodically monitor, its subgrantee's financial operations, records system, and procedures. Particular attention should be directed to the maintenance of current financial data.

2. Recording Financial Activities. The subgrantee's grant award or contract obligation as well as cash advances and other financial activities must be recorded in the financial records of the grantee or its designee in summary form. Subgrantee expenditures must be recorded on the books of the state supreme court or evidenced by report forms duly filed by the subgrantee. Matching contributions provided by subgrantees must likewise be recorded, as should any project income resulting from program operations.

3. Budgeting and Budget Review. The grantee or its designee must ensure that each subgrantee prepares an adequate budget as the basis for its award commitment. The state supreme court must maintain the details of each project budget on file.

4. Accounting for Match. The grantee or its designee will ensure that subgrantees comply with the match requirements specified in this guideline.

5. Audit Requirement. The grantee or its designee is required to ensure that subgrantees meet the necessary audit requirements set forth by SJI.

6. Reporting Irregularities. The grantee, its designees, and its subgrantees are responsible for promptly reporting to SJI the nature and circumstances surrounding any financial irregularities discovered.

b. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system:

- Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure, including matching contributions and project income.
- Assures that expended funds are applied to the appropriate budget category included within the approved grant.
- Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes.
- Provides cost and property controls to assure optimal use of grant funds.
- Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant.
- Meets the prescribed requirements for periodic financial reporting of operations.
- Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

c. Total Cost Budgeting and Accounting

Accounting for all funds awarded by SJI must be structured and executed on a total-project-cost basis. That is, total project costs, including SJI funds, State and local matching shares, and any other fund sources included in the approved project budget, serve as the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates based on total costs.

1. Timing of Matching Contributions. Matching contributions should be applied at the same time as the

obligation of SJI funds. Ordinarily, the full matching share must be obligated during the award period; however, with the written permission of SJI, contributions made following approval of the grant by the SJI Board of Directors but before the beginning of the grant may be counted as a match. If a proposed cash or in-kind match is not fully met, SJI may reduce the award amount accordingly to maintain the ratio of grant funds to matching funds stated in the award agreement.

2. Records for Match. All grantees must maintain records that clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions that exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does SJI funds and required matching shares. For all grants made to state and local courts, the state supreme court has primary responsibility for grantee/subgrantee compliance with the requirements of this section.

3. Maintenance and Retention of Records. All financial records—including supporting documents; statistical records; and all other information pertinent to grants, subgrants, cooperative agreements, or contracts under grants—must be retained by each organization participating in a project for at least 3 years for purposes of examination and audit. State supreme courts may impose record retention and maintenance requirements in addition to those prescribed in this section.

4. Coverage. The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, canceled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records must include the time and attendance reports for all individuals reimbursed under a grant, subgrant, or contract, whether they are employed full-time or part-time. Time and effort reports are required for consultants.

5. Retention Period. The 3-year retention period starts from the date of the submission of the final expenditure report.

6. Maintenance. Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's or subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

7. Access. Grantees and subgrantees must give any authorized representative of SJI access to and the right to examine all records, books, papers, and documents related to an SJI grant.

8. Project-Related Income. Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income and must be reported to SJI (see section VII.A.2, *Financial Reporting,* of this guideline). The policies governing the disposition of the various types of project-related income are listed below.

i. Interest. A state and any agency or instrumentality of a state, including institutions of higher education and hospitals, will not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a state, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government and nonprofit organizations that are grantees must refund any interest earned. Grantees must ensure minimum balances in their respective grant cash accounts.

ii. Royalties. The grantee or subgrantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions unless the terms and conditions of the grant provide otherwise.

iii. Registration and Tuition Fees. Registration and tuition fees may be considered as a cash match with prior written approval from SJI. Estimates of registration and tuition fees and any expenses to be offset by the fees should be included in the application budget forms and narrative.

iv. Income From the Sale of Grant Products. If the sale of products occurs during the project period, the income may be treated as a cash match with the prior written approval of SJI. The costs and income generated by the sales must be reported on the Quarterly Progress and Financial Status Reports and documented in an auditable manner. Whenever possible, the intent to sell a product should be disclosed in the application or reported to SJI in writing once a decision to sell products has been made. The grantee must request approval to recover its product development, reproduction, and dissemination costs (see section VIII.K.2, *Charges for Grant-Related Products/Recovery of Costs,* of this guideline).

v. Other. Other project income will be treated in accordance with disposition instructions set forth in the grant's terms and conditions.

d. Payments and Financial Reporting Requirements

The procedures and regulations set forth below are applicable to all SJI grant funds and grantees.

1. Request for Reimbursement of Funds. Grantees will receive funds on a reimbursable, U.S. Department of the Treasury check-issued or EFT basis. Upon receipt, review, and approval of a Request for Reimbursement (Form R) by SJI, payment will be issued directly to the grantee or its designated fiscal agent. The Form R, along with the instructions for its preparation and the SF 3881 Automated Clearing House (ACH/Miscellaneous Payment Enrollment Form for EFT), are available for download and submission in the SJI GMS.

2. Financial Reporting.

i. General Requirements. To obtain financial information concerning the use of funds, SJI requires that grantees/subgrantees submit timely reports for review.

ii. Due Dates and Contents. A Financial Status Report is required from all grantees for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to SJI funds, state and local matching shares, project income, and any other sources of funds for the project, as well as information on obligations and outlays. The Financial Status Report (Form F), along with instructions, is accessible in the SJI GMS. If a grantee requests substantial payment for a project prior to the completion of a given quarter, SJI may request a brief summary of the amount requested, by object class, to support the Request for Reimbursement.

iii. Consequences of Noncompliance With Submission Requirement. Failure of the grantee to submit required Progress and Financial Status Reports may result in suspension or termination of grant reimbursement.

e. Allowability of Costs

1. Costs Requiring Prior Approval.

i. Pre-Agreement Costs. The written prior approval of SJI is required for costs that are considered necessary but that

occur prior to the start date of the project period.

ii. Equipment. Grant funds may be used to purchase or lease only that equipment essential to accomplishing the goals and objectives of the project. The written prior approval of SJI is required when: (1) the amount of automated data processing equipment to be purchased or leased exceeds $10,000 or (2) the amount of software to be purchased exceeds $3,000.

iii. Consultants. The written prior approval of SJI is required when the rate of compensation to be paid to a consultant exceeds $800 a day. SJI funds may not be used to pay a consultant more than $1,100 per day.

iv. Budget Revisions. Budget revisions among direct-cost categories that: (1) transfer grant funds to an unbudgeted cost category or (2) individually or cumulatively exceed 5 percent of the approved original budget or the most recently approved revised budget require prior SJI approval.

2. Travel Costs. Transportation and per diem rates must comply with the policies of the grantee. If the grantee does not have an established written travel policy, then travel rates must be consistent with those established by the U.S. General Services Administration. Grant funds may not be used to cover the transportation or per diem costs for a member of a national organization to attend an annual or other regular meeting, or conference of that organization.

3. Indirect Costs. Indirect costs are only applicable to organizations that are not state courts or government agencies. These are costs of an organization that are not readily assignable to a particular project but are necessary to the operation of the organization and the performance of the project. The costs of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. Although SJI's policy requires all costs to be budgeted directly, it will accept indirect costs if a grantee has an indirect cost rate approved by a federal agency; however, recoverable indirect costs are limited to no more than 75 percent of a grantee's direct personnel costs (salaries plus fringe benefits).

i. Approved Plan Available.

- A copy of an indirect cost rate agreement or allocation plan approved for a grantee during the preceding 2 years by any federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars must be submitted to SJI.
- Where flat rates are accepted in lieu of actual, indirect costs, grantees may not also charge expenses normally included in overhead pools (*e.g.,* accounting services, legal services, building occupancy and maintenance, etc.) as direct costs.

f. Audit Requirements

1. Implementation. Grantees must provide for an annual fiscal audit. This requirement also applies to a state or local court receiving a subgrant from the state supreme court. Audits conducted using generally accepted auditing standards in the United States will satisfy the requirement for an annual fiscal audit. The audit must be conducted by an independent Certified Public Accountant or a state or local agency authorized to audit government agencies. The audit report must be made available to SJI electronically, if requested.

2. Resolution and Clearance of Audit Reports. Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grantee must have policies and procedures for acting on audit recommendations by designating officials responsible for:

- Following up.
- Maintaining a record of the actions taken on recommendations and time schedules.
- Responding to and acting on audit recommendations.
- Submitting periodic reports to SJI on recommendations and actions taken.

3. Consequences of Non-Resolution of Audit Issues. Ordinarily, SJI will not make a subsequent grant award to an applicant that has an unresolved audit report involving SJI awards. Failure of the grantee to resolve audit questions may also result in the suspension or termination of payments for active SJI grants to that organization.

g. Closeout of Grants

1. Grantee Closeout Requirements. Within 90 days of the end date of the grant or any approved extension thereof, the following documents must be submitted to SJI by grantees:

i. Financial Status Report. The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated or unexpended funds will be de-obligated from the award by SJI. Final payment requests for obligations incurred during the award period must be submitted to SJI prior to the end of the 90-day closeout period.

ii. Final Progress Report. This report should describe the project activities during the final calendar quarter of the project and the closeout period, including to whom project products have been disseminated; provide a summary of activities during the entire project; specify whether all the objectives set forth in the approved application or an approved adjustment have been met and, if any of the objectives have not been met, explain why not; and discuss what, if anything, could have been done differently that might have enhanced the impact of the project or improved its operation. These reporting requirements apply at the conclusion of every grant.

2. Extension of Closeout Period. Upon the written request of the grantee, SJI may extend the closeout period to assure completion of the grantee's closeout requirements. Requests for an extension must be submitted at least 14 days before the end of the closeout period and must explain why the extension is necessary and what steps will be taken to assure that all the grantee's responsibilities will be met by the end of the extension period. Extensions must be submitted via the SJI GMS as Grant Adjustments.

X. Grant Adjustments

All requests for programmatic or budgetary adjustments requiring SJI approval must be submitted by the project director in a timely manner (ordinarily 30 days prior to the implementation of the adjustment being requested). All requests for changes from the approved application will be carefully reviewed for both consistency with this guideline and the enhancement of grant goals and objectives. Failure to submit adjustments in a timely manner may result in the termination of a grantee's award.

a. Grant Adjustments Requiring Prior Written Approval

The following Grant Adjustments require the prior written approval of SJI:

- Budget revisions among direct cost categories that (1) transfer grant funds to an unbudgeted cost category or (2) individually or cumulatively exceed 5 percent of the approved original budget or the most recently approved revised budget.
- A change in the scope of work to be performed or the objectives of the project.
- A change in the project site.
- A change in the project period, such as an extension of the grant period or extension of the Final Financial Report or Final Progress Report deadline.

- Satisfaction of special conditions, if required.
- A change in or temporary absence of the project director.
- The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change in a person assigned to a key project staff position.
- A change in or temporary absence of the person responsible for managing and reporting on the grant's finances.
- A change in the name of the grantee organization.
- A transfer or contracting out of grant-supported activities.
- A transfer of the grant to another recipient.
- Pre-agreement costs.
- The purchase of Americans with Disabilities Act (ADA) equipment and software.
- Consultant rates.
- A change in the nature or number of the products to be prepared or the way a product would be distributed.

b. Requests for Grant Adjustments

All grantees must promptly notify SJI, in writing, of events or proposed changes that may require adjustments to the approved project design. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the program manager determines would help SJI's review. All requests for Grant Adjustments must be submitted via the SJI GMS.

c. Notification of Approval or Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment signed by the SJI Executive Director. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

d. Changes in the Scope of the Grant

Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by SJI. A grantee may make minor changes to methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification to SJI.

e. Date Changes

A request to change or extend the grant period must be made at least 30 days in advance of the end date of the grant. A revised task plan must accompany a request for an extension of the grant period, along with a revised budget if shifts among budget categories will be needed. A request to change or extend the deadline for the Final Financial Report or Final Progress Report must be made at least 14 days in advance of the report deadline.

f. Temporary Absence of the Project Director

Whenever an absence of the project director is expected to exceed a continuous period of 1 month, the plans for the conduct of the project director's duties during such absence must be approved in advance by SJI. This information must be provided in a letter signed by an authorized representative of the grantee or subgrantee at least 30 days before the departure of the project director or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by SJI.

g. Withdrawal of or Change in Project Director

If the project director relinquishes or expects to relinquish active direction of the project, SJI must be notified immediately. In such cases, if the grantee or subgrantee wishes to terminate the project, SJI will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to SJI for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by SJI.

h. Transferring or Contracting Out of Grant-Supported Activities

No principal activity of a grant-supported project may be transferred or contracted out to another organization without specific prior approval by SJI. All such arrangements must be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval to SJI at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, will be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to SJI.

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Hon. Gayle A. Nachtigal (Secretary), Circuit Court Judge (ret.), Washington County Circuit Court, Hillsboro, OR
Hon. David Brewer (Treasurer), Justice (ret.), Supreme Court of Oregon, Salem, OR
Hon. Jonathan Lippman, Chief Judge of the State of New York (ret.); Of Counsel, Latham & Watkins, LLP, New York, NY
Hon. Chase Rogers, Chief Justice (ret.), Supreme Court of Connecticut; Partner, Day Pitney, LLP, Hartford, CT
Hon. Wilfredo Martinez, Senior Judge, Ninth Judicial Circuit of Florida, Orlando, FL
Marsha J. Rabiteau, President & CEO, Center for Human Trafficking Court Solutions, Bloomfield, CT
Isabel Framer, President, Language Access Consultants LLC, Copley, OH
Jonathan D. Mattiello, Executive Director (ex officio)

Jonathan D. Mattiello,

Executive Director.

[FR Doc. 2023–22802 Filed 10–16–23; 8:45 am]

BILLING CODE 6820–SC–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Establishment and Request for Nominations for the Seasonal and Perishable Agricultural Products 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) and the U.S. Department of Agriculture (USDA) have established a new trade advisory committee known as the Seasonal and Perishable Agricultural Products Advisory Committee (Committee) to provide advice and recommendations to the U.S. Trade Representative and the Secretary of Agriculture in connection with U.S. trade policy that concerns administrative actions and legislation that would promote the competitiveness of Southeastern U.S. producers of seasonal and perishable agricultural products. USTR is accepting applications from qualified individuals interested in serving a four-year term as a Committee member.

DATES: USTR will accept nominations on a rolling basis for Committee membership for an initial four-year charter term.

FOR FURTHER INFORMATION CONTACT: Ethan Holmes, Director for Private Sector Engagement, at *Ethan.M.Holmes@ustr.eop.gov*, (202) 881–9185.

SUPPLEMENTARY INFORMATION:

1. Background

Section 135(c)(2) of the Trade Act of 1974, as amended (19 U.S.C. 2155(c)(2)), authorizes the President to establish appropriate sectoral or functional trade advisory committees. 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 this authority, the U.S Trade Representative, jointly with the Secretary of Agriculture, established the Committee to provide advice and recommendations to them on trade policy and development matters that have a significant relationship to administrative actions and legislation that would promote the competitiveness of Southeastern U.S. producers of seasonal and perishable agricultural products.

The Committee meets as needed in person or by virtual or telephone conference, generally four times per year, at the call either of the U.S. Trade Representative and the Secretary of Agriculture or their designee, depending on various factors such as the level of activity of trade negotiations and the needs of the U.S. Trade Representative and the Secretary of Agriculture.

II. Membership

The U.S. Trade Representative and Secretary of Agriculture jointly appoint up to 25 members who represent the views and interests of Southeast U.S. producers of seasonal and perishable agricultural products. In addition to general trade, investment, and development issues, members must have expertise in areas such as:

- growing and selling seasonal and perishable fruits and vegetables.
- understanding the needs and market dynamics affecting producers of seasonal and perishable fruits and vegetables in the Southeastern United States.
- understanding the existing State and Federal support programs and resources for producers of seasonal and perishable fruits and vegetables.
- developing and presenting actionable recommendations to U.S. Government officials.

To ensure that the Committee is broadly representative, USTR and USDA will consider qualified representatives of key sectors and groups of the economy with an interest in seasonal and perishable produce within the Southeastern United States. Fostering diversity, equity, inclusion and accessibility (DEIA) is one of the top priorities.

The U.S. Trade Representative and the Secretary of Agriculture appoint members jointly and members serve at their discretion. Members serve for a term of up to four years or until the Committee is scheduled to expire. The U.S. Trade Representative and the Secretary of Agriculture may reappoint individuals for any number of terms.

The U.S. Trade Representative and the Secretary of Agriculture are 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. USTR and USDA strongly encourage diverse backgrounds and perspectives and makes appointments to the Committee without regard to political affiliation and in accordance with equal opportunity practices that promote diversity, equity, inclusion, and accessibility. USTR and USDA strive to ensure balance in terms of sectors, demographics, and other factors relevant to USTR's needs.

Committee members serve without either compensation or reimbursement of expenses. Members are responsible for all expenses they incur to attend meetings or otherwise participate in Committee 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.

Committee members are appointed to represent their sponsoring U.S. entity's interests on U.S. trade policy that affects the competitiveness of Southeastern U.S. producers of seasonal and perishable agricultural products, and thus the 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 Committee, USTR and USDA. USTR anticipates that almost all Committee 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 Committee. 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 Committee 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 Committee, 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 Committee membership, interested persons should submit the following to 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 U.S. trade policy that affects the competitiveness of Southeastern U.S. producers of seasonal and perishable agricultural products trade and environmental matters, as described in more detail in part II above, that is relevant to the work of the Committee, USTR and USDA.

• 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 Committee 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. 2023–22880 Filed 10–16–23; 8:45 am]

BILLING CODE 3390–F4–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2023–0038]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for an information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by December 18, 2023.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 0038 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Berg, (202) 740–4602, Office of Freight Management and Operations, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Certification of Enforcement of Vehicle Size and Weight Laws.

Background: Title 23, U.S.C., section 141, requires each State, the District of Columbia and Puerto Rico to file an annual certification that they are enforcing their size and weight laws on Federal-aid highways and that their Interstate System weight limits are consistent with Federal requirements to be eligible to receive an apportionment of Federal highway trust funds. Failure of a State to file a certification, adequately enforce its size and weight laws, and enforce weight laws on the Interstate System that are consistent with Federal requirements, could result in a specified reduction of its Federal highway fund apportionment for the next fiscal year. In addition, section 123 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95–599, 92 Stat. 2689, 2701) requires each jurisdiction to inventory annually (1) its penalties for violation of its size and weight laws, and (2) the term and cost of its oversize and overweight permits. Section 141 also authorizes the Secretary to require States to file such information as is necessary to verify that their certifications are accurate. To determine whether States are adequately enforcing their size and weight limits, FHWA requires that each State submit to the FHWA an updated plan for enforcing their size and weight limits. The plan goes into effect at the beginning of each Federal fiscal year. At the end of the fiscal year, States must submit their certifications and sufficient information to verify that their enforcement goals established in the plan have been met.

Respondents: The State Departments of Transportation (or equivalent) in the 50 states, the District of Columbia, and the Commonwealth of Puerto Rico.

Frequency: Annually in separate collections: one certification and one plan.

Estimated Average Burden per Response: Each response will take approximately 40 hours.

Estimated Total Annual Burden Hours: 4,160 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection of information in the plan and in the certification is necessary for the U.S. DOT's performance, including whether the information will have practical utility; (2) the accuracy of the U.S. DOT's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology or reduced frequency of collection of the plan, 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.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on: October 12, 2023.

Jazmyne Lewis,

Information Collection Officer.

[FR Doc. 2023–22902 Filed 10–16–23; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. app. 2, section 10(a)(2), that a meeting will be held at the United States Treasury Department, 15th Street and Pennsylvania Avenue NW, Washington, DC on October 31, 2023, at

8:30 a.m., of the following debt management advisory committee: Treasury Borrowing Advisory Committee.

At this meeting, the Treasury is seeking advice from the Committee on topics related to the economy, financial markets, Treasury financing, and debt management. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. app. 2, section 10(d) and Public Law 103–202, section 202(c)(1)(B) (31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. app. 2, section 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, section 202(c)(1)(B).

Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. app. 2, section 3. Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Fred Pietrangeli, Director for Office of Debt Management (202) 622–1876.

Dated: October 12, 2023.

Frederick E. Pietrangeli,

Director (for Office of Debt Management).

[FR Doc. 2023–22840 Filed 10–16–23; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Cemeteries and Memorials, 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 annual meeting of the Advisory Committee on Cemeteries and Memorials will be held October 25–26, 2023. Due to unforeseen administrative and logistical circumstances and DFO availability, VA is announcing this meeting with less than 15 calendar days public notice. The meeting sessions will begin and end as follows:

Date(s)	Time(s)	Location(s)	Open to the public
October 25, 2023	8:15 a.m. to 9:45 a.m. Mountain Daylight Time (MDT).	Tour of Little Bighorn Battlefield National Monument, including Custer National Cemetery (National Park Service).	Yes.
October 25, 2023	10 a.m.–10:50 a.m. MDT	Apsalooke Tribal Veterans Cemetery, Highway 1 and Xavier Street, Crow Agency 59022.	Yes.
October 25, 2023	1:45 p.m.–2:45 p.m. MDT	Billings VA Community Based Clinic, 1766 Majestic Lane, Billings, MT 59102.	Yes.
October 25, 2023	3:10 p.m.–4:10 p.m. MDT	Yellowstone National Cemetery, 55 Buffalo Trail Road, Laurel, MT 59044.	Yes.
October 26, 2023	9:15 a.m. to 3:45 p.m. MDT	Double Tree by Hilton, Hotel Billings, 27 N 27th Street, Billings, MT 59101.	Yes.

Sessions are open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of national cemeteries, soldiers' lots and plots, the selection of new national cemetery sites, the erection of appropriate memorials, and the adequacy of Federal burial benefits. The Committee makes recommendations to the Secretary regarding such activities.

On Wednesday, October 25, 2023, the committee will convene an open session with tours to Custer National Cemetery at Little Bighorn Battlefield, Apsaalooke Tribal Veterans Cemetery, VA Community Based Outpatient Clinic and Yellowstone National Cemetery. Transportation will not be provided for public guests.

On Thursday, October 26, 2023, the committee will convene an open session from 9:30 a.m. to 3:45 p.m. MDT. The agenda will include remarks by National Cemetery Administration (NCA) leadership, and briefings from the Office of Army Cemeteries and Veterans Legacy Memorial Program, as well as subcommittee updates, public comments and open discussion.

Any member of the public seeking additional information should contact Ms. Faith Hopkins, Designated Federal Officer, at 202–603–4499. Please leave a voice message. The Committee will also accept written comments. Comments may be transmitted electronically to the Committee at *faith.hopkins@va.gov.* In the public's communications with the Committee, the writers must identify themselves and state the organizations, associations, or persons they represent.

Any member of the public who wishes to attend the meeting virtually on October 26, 2023, may use the following Cisco Webex Meeting Link:

Join On Your Computer Or Mobile App:

https://veteransaffairs.webex.com/veteransaffairs/j.php?MTID=m5ffea4a7bd2ee7d57621d2465f281ea2.

Meeting number: 2762 033 6050

Password: CdYdxg8m*45

Join by phone: 404–397–1596

Access code: 276 203 36050

Dated: October 11, 2023.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2023–22796 Filed 10–16–23; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 88 Tuesday,
No. 199 October 17, 2023

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Removal of 21 Species From the List of Endangered and Threatened Wildlife; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FF08E22000 FXES111309FEDR 234]

RIN 1018–BC98

Endangered and Threatened Wildlife and Plants; Removal of 21 Species From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service or USFWS), are removing 21 species from the Federal List of Endangered and Threatened Wildlife due to extinction. This action is based on a review of the best available scientific and commercial information, which indicates that these species are no longer extant and, as such, no longer meet the definition of an endangered species or a threatened species under the Endangered Species Act of 1973, as amended (Act).

DATES: This rule is effective November 16, 2023.

ADDRESSES: The proposed rule and this final rule, the comments we received on the proposed rule, and supporting documents are available at *https://www.regulations.gov* under the following docket numbers:

Species	Docket No.
Kauai akialoa	FWS–R1–ES–2020–0104
Kauai nukupuu	FWS–R1–ES–2020–0104
Kauai ʻoʻo (honeyeater)	FWS–R1–ES–2020–0104
Large Kauai thrush (kamʻa)	FWS–R1–ES–2020–0104
Maui akepa	FWS–R1–ES–2020–0104
Maui nukupuu	FWS–R1–ES–2020–0104
Molokai creeper (kakawahie)	FWS–R1–ES–2020–0104
Poʻouli (honeycreeper)	FWS–R1–ES–2020–0104
Bridled white-eye	FWS–R1–ES–2020–0104
Little Mariana fruit bat	FWS–R1–ES–2020–0104
San Marcos gambusia	FWS–R2–ES–2020–0105
Scioto madtom	FWS–R3–ES–2020–0106
Flat pigtoe	FWS–R4–ES–2020–0107
Southern acornshell	FWS–R4–ES–2020–0107
Stirrupshell	FWS–R4–ES–2020–0107
Upland combshell	FWS–R4–ES–2020–0107
Green blossom (pearly mussel)	FWS–R4–ES–2020–0108
Tubercled blossom (pearly mussel)	FWS–R4–ES–2020–0108
Turgid blossom (pearly mussel)	FWS–R4–ES–2020–0108
Yellow blossom (pearly mussel)	FWS–R4–ES–2020–0108
Bachman's warbler	FWS–R4–ES–2020–0110

FOR FURTHER INFORMATION CONTACT:

Species	Contact information
Bridled white-eye, Kauai akialoa, Kauai nukupuu, Kauai ʻoʻo (honeyeater), large Kauai thrush (kama), little Mariana fruit bat, Maui akepa, Maui nukupuu, Molokai creeper (kakawahie), and poʻouli (honeycreeper).	Earl Campbell, Field Supervisor, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Suite 3–122, Honolulu HI 96850, Telephone: 808–792–9400.
Bachman's warbler	Thomas McCoy, Field Supervisor, South Carolina Field Office, 176 Croghan Spur, Charleston, SC 29407, Telephone: 843–300–0431.
Flat pigtoe, southern acornshell, stirrupshell, and upland combshell	James Austin, Deputy Field Supervisor, Mississippi Field Office, 6578 Dogwood View Parkway, Suite A, Jackson, MS 39213, Telephone: 601–321–1129.
Green blossom (pearly mussel), tubercled blossom (pearly mussel), turgid blossom (pearly mussel), and yellow blossom (pearly mussel).	Daniel Elbert, Field Supervisor, Tennessee Field Office, Interior Region 2—South Atlantic-Gulf (Tennessee), 446 Neal Street, Cookeville, TN 38506, Telephone: 931–528–6481.
San Marcos gambusia	Karen Myers, Field Supervisor, Austin Ecological Services Field Office, 1505 Ferguson Lane, Austin, TX 78754, Telephone: 512–490–0057.
Scioto madtom	Patrice Ashfield, Field Supervisor, Ohio Ecological Services Field Office, 4625 Morse Road, Suite 104, Columbus, OH 43230, Telephone: 614–416–8993.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations in title 50 of the Code of Federal Regulations (50 CFR part 424) set forth the procedures for adding species to,

removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants in 50 CFR part 17. Under our regulations at 50 CFR 424.11(e)(1), a species shall be delisted if, after conducting a status review based on the best scientific and commercial data available, we determine that the species is extinct. The 21 species in this final rule are currently listed as endangered or threatened; we are delisting them due to extinction. We can only delist a species by issuing a rule to do so.

What this document does. We are removing 21 species from the List of Endangered and Threatened Wildlife (List) due to extinction.

While our September 30, 2021, proposed rule (86 FR 54298) proposed to delist 23 species, this rule makes final the delisting of only 21 of those. Elsewhere in this issue of the **Federal Register**, we withdraw our proposed delisting of *Phyllostegia glabra* var. *lanaiensis,* which was part of our September 30, 2021, proposed rule.

The basis for our action. We have determined that the 21 species that are the subjects of this rule should be removed from the List because the best available information indicates that they are extinct.

Peer review. In accordance with our policy, ''Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,'' which was published on July 1, 1994 (59 FR 34270) and our August 22, 2016, Director's Memorandum ''Peer Review Process,'' we sought the expert opinion of 28 appropriate and independent specialists for 13 species in this rule. We requested those experts review the scientific data and interpretations for each species or group of species for which the associated 5-year review had not been peer reviewed prior to publication of the proposed rule (86 FR 54298; September 30, 2021). For the eight southeastern mussel species, the 5-year reviews were peer reviewed prior to the publication of the proposed rule. In certain cases, species were grouped together for peer review based on similarities in biology or geographic occurrences. We sent copies of the 5-year species status reviews to the peer reviewers immediately following the proposed rule's publication in the **Federal Register**. The purpose of such review is to ensure that our decisions are based on scientifically sound data, assumptions, and analysis. We received feedback from 16 of the 28 peer reviewers contacted. We have incorporated the results of these reviews, as appropriate, into the appropriate assessment forms and this final rule. Additionally, we have provided our responses to peer review feedback below, under Summary of Comments and Recommendations.

Summary of Changes From the Proposed Rule

In preparing this final rule, we reviewed and fully considered all applicable comments we received during the comment period from the peer reviewers and the public on the proposed rule to delist 23 species due to extinction. In this final rule, we are delisting 21 species due to extinction.

Due to new surveys conducted, we are withdrawing our proposed rule to remove *Phyllostegia glabra* var. *lanaiensis* from the List of Endangered and Threatened Plants; the document withdrawing the proposed delisting of *P. glabra* var. *lanaiensis* is published elsewhere in this issue of the **Federal Register**.

On July 7, 2022, we published in the **Federal Register** (87 FR 40477) a 6-month extension of the final determination on whether to delist the ivory-billed woodpecker (*Campephilus principalis*). That document also reopened the public comment period on the proposed delisting of the ivory-billed woodpecker. We extended the final determination on the proposed delisting of this species due to substantial disagreement among scientists knowledgeable about the species regarding the sufficiency or accuracy of the available data relevant to the determination. In a separate, future publication, we will either finalize the delisting of the ivory-billed woodpecker due to extinction or withdraw the proposed delisting of this species and retain the species' status as an endangered species.

Lastly, in the proposed rule regulation § 17.95 for the Eleven Mobile River Basin Mussel Species Critical Habitat designation, we had identified the orange-nacre mucket under the name *Lampsilis perovalis.* We have corrected this to the name the species was listed under, *Hamiota perovalis.*

Summary of Comments and Recommendations

In the proposed rule published on September 30, 2021 (86 FR 54298), we requested that all interested parties submit written comments on the proposal by November 29, 2021. We also contacted appropriate State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. A newspaper notice inviting the public to provide comments was published in USA Today on October 8, 2021. We received a request for a public hearing for the ivory-billed woodpecker on November 10, 2021. A newspaper notice inviting the public to provide comments at the public hearing was published in USA Today on January 11, 2022. A public hearing was conducted on January 26, 2022. All applicable substantive information we received during the comment period has been incorporated directly into this final determination and the appropriate species assessment forms or is addressed below.

Of the public comments we received on the proposed rule, the majority concerned the ivory-billed woodpecker. We will address those comments in a separate, future publication. Of the public comments related to the other 22 species, two included substantive comments that are summarized below and incorporated into this final rule and the associated species assessment forms, as appropriate.

Peer Reviewer Comments

In accordance with our 1994 peer review policy, we solicited expert opinion from knowledgeable individuals with scientific expertise that included familiarity with these species and their habitat, biological needs, and threats. As stated above, we sought peer review for species whose 5-year reviews had not been previously peer reviewed. We reviewed all comments received from peer reviewers for substantive issues and new information regarding these species. The reviewers made suggestions and comments that strengthened our analysis and improved this final rule.

For the Bachman's warbler, we sent the 5-year reviews to a total of three peer reviewers. We received responses from all three reviewers. Peer reviewers provided additional information on the biological background information of the species. We have incorporated the information into both this rule and the supporting documents.

For the Scioto madtom, we sent the 5-year review to a total of three peer reviewers. We received responses from all three reviewers. Peer reviewers provided clarification on the results of prior surveys that were conducted. We have incorporated the information into this rule and the supporting documents.

For the San Marcos gambusia, we sought the expert opinions of three specialists with expertise in biology, habitat, and threats to the species, and we received responses from all three experts. Two peer reviewers confirmed that San Marcos gambusia should be delisted due to extinction, and the third peer reviewer had minor editorial

comments that were incorporated, where appropriate, into this rule and the supporting documents. The peer reviewers did not provide any additional substantial information that would influence a change in our decision from the proposed rule.

For the Hawaiian and Mariana Islands species, we sought the expert opinion of a total of 11 individuals with expertise in the biology, habitat, and threats to the species. Six reviewers provided comments and feedback. We have organized and addressed those comments below.

Little Mariana Fruit Bat

(1) Comment: One peer reviewer noted that the related, larger-bodied Mariana fruit bat (called fanihi in the Chamorro language) moves between Rota and Guam, stating that Rota has larger populations of the species compared to Guam, but that large groups of fanihi can be observed on Guam when Rota experiences storms. The reviewer wondered whether, similarly, the little Mariana fruit bat could be present on Rota and move between Rota and Guam.

Response: We conclude that it is extremely unlikely that the little Mariana fruit bat has persisted undetected on Rota or Guam considering the tremendous amount of effort that has gone into monitoring the fanihi on those islands.

(2) Comment: One peer reviewer asked how environmental threats such as typhoons might impact little Mariana fruit bat populations and hypothesized that if the little Mariana fruit bat and the fanihi were to have roosted together, the fanihi may have contributed to the decline of the little Mariana fruit bat by outcompeting for resources following typhoon or other similar environmental events.

Response: We noted possible vulnerabilities of the little Mariana fruit bat to typhoons and other environmental factors under ''Threats Evaluation'' in the species' 5-year review (USFWS 2019, p. 4). If the little Mariana fruit bat exhibited traits similar to that of other *Pteropus* spp., including low fecundity, it would have been susceptible to most large-scale disturbances to its habitat, particularly typhoons. However, too little is known about the little Mariana fruit bat's biology for us to speculate about the outcome of possible competition with the fanihi for resources following events such as typhoons.

(3) Comment: One peer reviewer asked about the potential for using genetics to determine whether the bats present on Guam and Rota represent a single species and whether the little Mariana fruit bat is truly extinct on both islands.

Response: As noted in our 5-year review for the little Mariana fruit bat, genetic analysis of skin samples of *Pteropus* spp. concluded that the species was genetically distinct (Almeida et al. 2014, entire). We would welcome any new genetic information about the fanihi or the little Mariana fruit bat should it become available, but in the absence of this information, we conclude that the best available information indicates that the little Mariana fruit bat is extinct.

Hawaiian Islands Bird Species

(4) Comment: One peer reviewer mentioned that the referenced searches for po'ouli in Kīpahulu Valley (1997–1999) relied primarily on existing trails from which it is not possible to adequately survey the entire area of rainforest habitat where po'ouli could still potentially persist. The reviewer further stated that Kīpahulu Valley (and much of the east Maui rainforest) has many steep gulches and frequently dense and impenetrable vegetation and stream beds, and the area is very difficult to cover adequately on foot, adding further difficultly to survey efforts.

Response: Specific searches to locate Maui's rarest forest birds were undertaken in 1967 and 1981 in Kīpahulu Valley, and variable circular-plot (VCP) counts were conducted in 1980, 1992, and 1996 along Hawaii Forest Bird Survey (HFBS) transects in rainforests of Maui's east region (Reynolds and Snetsinger 2001, p. 139). Variable circular plot (VCP) studies are surveys conducted at pre-established stations along transects. A surveyor counts all birds seen and heard during an 8-minute count period and estimates the distance from the count station to each bird seen or heard. From this information, the VCP studies estimate the number of birds in a surveyed area, along with a confidence interval for the estimate. Despite these searches, the po'ouli has never been found in Kīpahulu Valley and is known historically only from the Hanawi Natural Area Reserve (NAR) of northeast Maui (Scott et al. 1986, p. 183), where it was most recently observed in 2003 and 2004 (USFWS 2006, pp. 2–153–2–154). Collectively, the weight of evidence indicates that the po'ouli is extinct.

(5) Comment: One peer reviewer indicated that po'ouli is extremely cryptic and moves quietly through the understory and canopy. This species could easily be missed by inexperienced observers not familiar with the bird's behavior and is even easy to miss for experienced observers searching in known occupied habitat.

Response: After the continued existence of five to six po'ouli was confirmed in 1994–1995 in the Kūhiwa drainage of Hanawi NAR, thorough surveys of the species' historical range were conducted from 1995 to 1997, with 81 sightings of five individual po'ouli (Baker et al. 2001, p. 144). In 1997, only three individual birds were found in three separate territories, and one individual was color-banded in 1997. The po'ouli was last observed in 2003 and 2004 (USFWS 2006, pp. 2–153–2–154) and despite extensive time in the area from 2006 to 20011, no other birds have been located since these surveys. Using 2004 as the last reliable observation record for po'ouli, 2005 is estimated to be the year of extinction, with 2008 as the upper 95 percent confidence bound on that estimate (Elphick et al. 2010, p. 620). It is extremely unlikely that the po'ouli has persisted undetected considering extensive search efforts to document presence of the species on Maui.

(6) Comment: One peer reviewer indicated that extensive searches for birds on the island of Maui were not conducted at elevations where higher presence of avian disease is expected, based on the assumption that rare bird species would not persist because of the threat of avian malaria.

Response: The Rare Bird Search (RBS) on east Maui was conducted at elevations as low as 3,280 feet (1,000 meters), which is well within the zone of higher prevalence of avian malaria (Reynolds and Snetsinger 2001, p. 134). We have added this information to the species accounts of the Maui forest birds in this final rule.

(7) Comment: One peer reviewer indicated that the traditional VCP survey methods are not effective for detecting rarer, patchily distributed birds and particularly ineffective for a species like the po'ouli, which vocalizes infrequently and sounds similar to both Maui parrotbill (*Pseudonestor xanthophrys*) and Maui creeper (*Paroreomyza montana*). The reviewer further stated that confirmation of po'ouli is primarily visual, which can be quite challenging given its dark coloration, the dense vegetation it inhabits, and the frequently inclement rainy/misty survey conditions.

Response: The VCP survey method does have limited effectiveness for detection of po'ouli. Because of this, we relied strongly on information from other sources including RBS and field studies conducted in Hanawi NAR in

the area of the only known historical population of po'ouli. Collectively, the weight of evidence indicates that the po'ouli is extinct.

(8) Comment: One peer reviewer asked that we better define what is meant by ''extensive presence'' and ''qualified observers'' in reference to personnel conducting forest bird research in the field.

Response: While working on Maui parrotbill (also called kiwikiu) recovery from 2006 to 2011, personnel with the Maui Forest Bird Recovery Project (MFBRP) spent thousands of person hours (*i.e.,* extensive presence) in the area of the last po'ouli sightings. These personnel (*i.e.,* qualified observers) who conducted this field work were highly trained to be able to detect all species of Hawaiian forest birds by sight and sound.

(9) Comment: One peer reviewer recommended exploring some of the newer survey design methods and analyses (*e.g.,* occupancy estimation) for rare species and to further develop and optimize sampling protocols for rarer bird species like po'ouli, Maui akepa, and Maui nukupuu.

Response: Exploring possible application of different survey design methods and analyses and further developing and optimizing sampling protocols for rarer bird species will be taken into consideration for future survey and sampling efforts. However, we determined that the methods we used to determine absence of rare species are robust, and we have high confidence in our conclusion that the Hawaiian forest birds that are addressed in this rule are extinct.

(10) Comment: One peer reviewer indicated that the three types of surveys/searches used to detect po'ouli each have their own inherent strengths and weaknesses. The commenter stated that although the protocols for two of the surveys/searches (VCP and RBS) are described, protocols and analytical techniques for additional surveys conducted within Hanawi NAR and elsewhere on east Maui are not described.

Response: The third type of survey/search is best described as the long-term presence of qualified personnel doing field work in an area where rare species could still persist. While working on Maui parrotbill (kiwikiu) recovery from 2006 to 2011, personnel with the MFBRP spent thousands of person hours in the area of the last po'ouli sightings. Much of this consisted of active searches for kiwikiu, observations of this species when it was detected, and other types of conservation work in the area. Personnel who conducted field work were highly trained to be able to detect all species of Hawaiian forest birds by sight and sound. After thousands of hours of working in the Hanawi NAR in areas where po'ouli, Maui akepa, and Maui nukupuu were last detected, and no detections of these species occurred, MFBRP was strongly confident that po'ouli, Maui akepa, and Maui nukupuu are no longer present (Mounce 2021, pers. comm.).

Public Comments

Flat Pigtoe, Stirrupshell, Southern Acornshell, Upland Combshell

(11) Comment: One commenter indicated that we prematurely concluded that the mussel species are extinct, stating that the species could possibly be found in places that have not yet been surveyed. The commenter asked that we study the species longer before they are declared extinct and removed from the List.

Response: We deemed each of the species (flat pigtoe, stirrupshell, southern acornshell, and upland combshell) extinct based on significant alteration of all known historical habitat and lack of detections during numerous surveys conducted throughout each species' range.

For the flat pigtoe, surveys in historical habitat over the past three decades have failed to locate the species, and all historical habitat is impounded or modified by channelization and impoundments (USFWS 2015, p. 5). No live or freshly dead shells have been observed since the species was listed in 1987. Surveys between 1990–2001, and in 2002, 2003, 2009, 2011, and 2015, of potential habitat throughout the historical range, including intensive surveys of the Gainesville Bendway, where adequate habitat and flows may still occur below the Gainesville Dam on the Tombigbee River in Alabama, have failed to find any live or dead flat pigtoes (USFWS 2000, p. 81). Lack of finding the flat pigtoe despite extensive survey efforts in many habitats indicate that the species is extinct.

For the stirrupshell, over the past three decades, repeated surveys (circa 1988, 1998, 2001, 2002, 2003, 2006, 2011) of unimpounded habitat in the Sipsey and Tombigbee Rivers, including intensive surveys of the Gainesville Bendway, have failed to find any evidence of stirrupshell (Service 2009, p. 6; Service 2015, p. 7). The stirrupshell was also known from the Alabama River; however, over 92 hours of dive- bottom time were expended searching appropriate habitats for imperiled mussel species between 1997–2007 without encountering the species (Service 2009, p. 6), and a survey of the Alabama River in 2011 also did not find stirrupshell (Service 2015, p. 5). Surveys of the Black Warrior River in 1993 and from 2009–2012 (16 sites) focused on finding federally listed and State conservation concern priority mussel species but did not find any stirrupshells (Miller 1994, pp. 9, 42; McGregor et al. 2009, p. 1; McGregor et al. 2013, p. 1). The stirrupshell has not been found alive in the Black Warrior River or the Alabama River since the early 1980s (Service 1989, p. 3). The stirrupshell has not been collected alive since the Sipsey River was surveyed in 1978 (Service 1989, p. 4); one freshly dead shell was last collected from the Sipsey River in 1986 (Service 2000, p. 85). In the Tombigbee River, the stirrupshell has not been collected alive since completion of the Tennessee-Tombigbee Waterway in 1984 (Service 2015, p. 7). Mussel surveys within the Tombigbee River drainage during 1984–2015 failed to document the presence of the stirrupshell (Service 2015, p. 8). Lack of finding the stirrupshell despite extensive survey efforts in many habitats indicate that the species is extinct.

For the southern acornshell, many well-planned, comprehensive surveys by experienced State and Federal biologists have not been able to locate extant populations of southern acornshell (Service 2000, p. 57; Service 2008, p. 20; Service 2018, p. 7). Both the 2008 and 2018 5-year reviews reference multiple surveys by experienced Federal, State, and private biologists—17 survey reports from 1993–2006 and 6 survey reports from 2008–2017—and despite these repeated surveys of historical habitat in both the Coosa and Cahaba River drainages, no living animals or fresh or weathered shells of the southern acornshell have been located (Service 2008, p. 19; Service 2018, p. 6). The most recent records for the southern acornshell were from tributaries of the Coosa River in 1966–1968 and 1974, and the Cahaba River in 1938 (58 FR 14330 at 14331, March 17, 1993; Service 2008, p. 19; Service 2018, p. 5). No living populations of the southern acornshell have been located since the 1970s (Service 2000, p. 57; Service 2008, p. 20; Service 2018, p. 7). No live or freshly dead shells have been observed since the species was listed in 1987 (Service 2009, p. 6; Service 2015, p. 7). A freshly dead shell was last collected from the lower Sipsey River in 1986 (Service 2000, p. 85). Lack of finding the southern acornshell despite extensive survey efforts in many

habitats indicate that the species is extinct.

For the upland combshell, the species was last collected in the Black Warrior River drainage in the early 1900s; in the Coosa River drainage in 1986, from the Conasauga River near the Georgia/Tennessee State line; and the Cahaba River drainage in the early 1970s (58 FR 14330 at 14331, March 17, 1993; Service 2000, p. 61; Service 2018, p. 5). Both the 2008 and 2018 5-year reviews reference multiple surveys by experienced Federal, State, and private biologists—18 survey reports from 1993–2006 and 10 survey reports from 2008–2017—and despite these repeated surveys of historical habitat in the Black Warrior, Cahaba, and Coosa River drainages, no living animals or fresh or weathered shells of the upland combshell have been located (Service 2008, p. 19; Service 2018, p. 5). The most recent records for the upland combshell are many decades old: from tributaries of the Black Warrior in early 1900s, from the Cahaba River drainage in the early 1970s, and from the Coosa River drainage in the mid-1980s (58 FR 14330 at 14331, March 17, 1993; Service 2008, p. 19; Service 2018, p. 5). No living populations of the upland combshell have been located since the mid-1980s (Service 2000, p. 61; Service 2008, p. 20; Service 2018, p. 7). Lack of finding the upland combshell despite extensive survey efforts in many habitats indicate that the species is extinct.

Background

Section 4(c) of the Act (16 U.S.C. 1531 *et seq.*) requires the Secretary of the Interior to publish and maintain lists of endangered and threatened species. This includes delisting species that are extinct based on the best scientific and commercial data available. The Service can decide to delist a species due to extinction on its own initiative, as a result of a 5-year review under section 4(c)(2) of the Act, or because we are petitioned to delist.

Congress made clear that an integral part of the statutory framework is for the Service to make delisting decisions when appropriate and to revise the Lists of Endangered and Threatened Wildlife and Plants accordingly. For example, section 4(c)(1) of the Act requires the revision of the Lists of Endangered and Threatened Wildlife and Plants to reflect recent determinations, designations, and revisions. Similarly, section 4(c)(2) requires review of those Lists at least every 5 years; determination(s), based on those reviews, whether any species should be delisted or reclassified; and, if so, the application of the same standards and procedures as for listings under sections 4(a) and 4(b) of the Act. Finally, to make a finding that a particular action is warranted but precluded, the Service must make two determinations: (1) That the immediate proposal and timely promulgation of a final regulation is precluded by pending proposals to determine whether any species is endangered or threatened; and (2) that expeditious progress is being made to add qualified species to either of the Lists and to remove species from the Lists (16 U.S.C. 1533(b)(3)(B)(iii)). Delisting species that will not benefit from the Act's protections because they are extinct allows us to allocate resources responsibly for on-the-ground conservation efforts, recovery planning, 5-year reviews, and other protections for species that are extant and will therefore benefit from those actions.

Regulatory and Analytical Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an endangered species or a threatened species.

In 2019, jointly with the National Marine Fisheries Service, the Service issued a final rule that revised the regulations in 50 CFR part 424 regarding how we add, remove, and reclassify endangered and threatened species and the criteria for designating listed species' critical habitat (84 FR 45020; August 27, 2019).

Under the Act, we must review the status of all listed species at least once every 5 years. We must delist a species if we determine, on the basis of the best available scientific and commercial data, that the species is neither a threatened species nor an endangered species. Our regulations at 50 CFR 424.11(e) identify three reasons why we might determine that a listed species is neither an endangered species nor a threatened species: (1) The species is extinct; (2) the species does not meet the definition of an endangered species or a threatened species; or (3) the listed entity does not meet the statutory definition of a species.

In this final rule, we use the commonly understood biological definition of ''extinction'' as meaning that no living individuals of the species remain in existence. A determination of extinction will be informed by the best available information to indicate that no individuals of the species remain alive, either in the wild or captivity. This is in contrast to ''functional extinction,'' where individuals of the species remain alive, but the species is no longer viable and/or no reproduction will occur (*e.g.,* any remaining females cannot reproduce, only males remain, etc.).

In our analyses, we attempted to minimize the possibility of either (1) prematurely determining that a species is extinct where individuals exist but remain undetected, or (2) assuming the species is extant when extinction has already occurred. Our determinations of whether the best available information indicates that a species is extinct included an analysis of the following criteria: detectability of the species, adequacy of survey efforts, and time since last detection. All three criteria require taking into account applicable aspects of species' life history. Other lines of evidence may also support the determination and be included in our analysis.

In conducting our analyses of whether these species are extinct, we considered and thoroughly evaluated the best scientific and commercial data available. We reviewed the information available in our files, and other available published and unpublished information. These evaluations may include information from recognized experts; Federal, State, and Tribal governments; academic institutions; foreign governments; private entities; and other members of the public.

The 5-year reviews of these species contain more detailed biological information on each species. This supporting information can be found on the internet at *https://www.regulations.gov* under the appropriate docket number (see table under **ADDRESSES**, above). The following information summarizes the analyses for each of the species delisted by this rule.

Summary of Biological Status and Threats

Mammals

Little Mariana Fruit Bat (Pteropus Tokudae)

I. Background

Please refer to our proposed rule, published on September 30, 2021 (86 FR 54298), for a thorough review of the species background and legal history. Here, we will briefly summarize the species background. On August 27, 1984, we listed the little Mariana fruit bat as endangered (49 FR 33881). The most recent 5-year status review completed in 2019 (initiated on May 7, 2018; see 83 FR 20088) recommended delisting due to extinction likely resulting from habitat loss, poaching, and predation by the brown tree snake (*Boiga irregularis*) (USFWS 2019, entire). This recommendation was based on an assessment of all available

information for the species, coupled with an evaluation of population trends and threats affecting the larger, extant Mariana fruit bat, which likely shares similar behavioral and biological traits and provides important context for the historical decline of the little Mariana fruit bat.

The little Mariana fruit bat was first described from a male type specimen collected in August 1931 (Tate 1934, p. 1). Its original scientific name, *Pteropus tokudae,* remains current. Only three confirmed observations of the little Mariana fruit bat existed in the literature based on collections of three specimens: two males in 1931 (Tate 1934, p. 3), and a female in 1968 (Perez 1972, p. 146), all on the island of Guam where it was presumably endemic. Despite the dearth of confirmed collections and observations, two relatively recent studies have confirmed the taxonomic validity of the little Mariana fruit bat, via morphology (Buden et al. 2013, entire) and genetics (Almeida et al. 2014, entire).

The little Mariana fruit bat was always likely rare, as suggested by written accounts of the species first recorded in the early 1900s (Baker 1948, p. 54; Perez 1972, pp. 145–146; Wiles 1987, p. 154). In addition to possibly having been inherently rare, as indicated by the literature, a concurrent decline in the little Mariana fruit bat population likely occurred during the well-documented decrease in Mariana fruit bat abundance on Guam in the 1900s. In 1920, it was ''not an uncommon sight'' to see fruit bats flying over the forest during the daytime in Guam (Wiles 1987, p. 150). Just 10 years later (when the first two little Mariana fruit bat specimens were collected), fruit bats were uncommon on the island (Wiles 1987, p. 150), and were found mostly in northern Guam; introduced firearms may have been a contributing factor in their decline because they increased the efficiency of hunting (Wiles 1987, p. 150).

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

The little Mariana fruit bat was much smaller than the related Mariana fruit bat (Tate 1934, p. 2; Perez 1972, p. 146; Buden et al. 2013, pp. 109–110). Adult bats measured approximately 5.5 to 5.9 inches (in) (14 to 15.1 centimeters (cm)) in head-body length, with a wingspan of approximately 25.6 to 27.9 in (650 to 709 millimeters (mm)). The adults weighed approximately 5.36 ounces (152 grams). Although primarily dark brown in color, the little Mariana fruit bat showed some variation on the neck and head, which could appear pale gold and grayish or yellowish-brown in color. Because of their small size (O'Shea and Bogan 2003, pp. 49, 254; USFWS 2009, p. 55), it is possible that adult little Mariana fruit bats were historically confused with juvenile Mariana fruit bats. Therefore, historical accounts of the species may have been underrepresented (Perez 1972, p. 143; Wiles 1987, p. 15).

The challenges of surveying for the Mariana fruit bat and most *Pteropus* spp. (including, in theory, the little Mariana fruit bat) are numerous. Mariana fruit bats sleep during the day in canopy emergent trees, either solitarily or within colonial aggregations that may occur across several acres (O'Shea and Bogan 2003, p. 254; Utzurrum et al. 2003, p. 49; USFWS 2009, p. 269). The tropical islands where many tropical fruit bats (*Pteropus* spp.) are located have widely diverse and steeply topographical habitat, making surveys difficult. Additionally, most *Pteropus* spp. choose roost sites (both colonial and individual) that occur in locations difficult for people to reach, such as adjacent to steep cliffsides in remote forest areas (Wilson and Graham 1992, p. 65). The selection of roost sites in these areas is likely both a result of their evolved biology (for example, to take advantage of updrafts for flight) (Wilson and Graham 1992, p. 4) and possible learned behavior to avoid poachers (USFWS 2009, pp. 24–25; Mildenstein and Johnson 2017, p. 36). To avoid triggering this avoidance behavior, surveyors must generally keep a distance of 164 feet (50 meters) and survey only downwind of roost sites (Mildenstein and Boland 2010, pp. 12–13; Mildenstein and Johnson 2017, pp. 55, 86). Additionally, *Pteropus* spp. typically sleep during the day and do not vocalize, and flying individuals may be easily counted twice due to their foraging patterns (Utzurrum et al. 2003, p. 54).

Survey Effort

By 1945, fruit bats were difficult to locate even in the northern half of Guam, where they were largely confined to forested cliff lines along the coasts (Baker 1948, p. 54). During surveys conducted between 1963 and 1968, the Guam Division of Aquatic and Wildlife Resources (DAWR) confirmed that bats were declining across much of Guam and were absent in the south. It was also during these same field studies that the third and last little Mariana fruit bat was collected in northern Guam in 1968 (Baker 1948, p. 146).

Increased survey efforts during the late 1970s and early 1980s reported no confirmed sightings of the little Mariana fruit bat (Wheeler and Aguon 1978, entire; Wheeler 1979, entire; Wiles 1987, entire; Wiles 1987, pp. 153–154). In the final rule listing the little Mariana fruit bat as endangered (49 FR 33881; August 27, 1984), we noted that the species was on the verge of extinction and had not been verifiably observed after 1968. When we published a joint recovery plan for the little Mariana fruit bat and the Mariana fruit bat in 1990, we considered the little Mariana fruit bat already extinct based upon the available literature (USFWS 1990, p. 7).

During the 1990s, Mariana fruit bat numbers on Guam decreased and fatalities of immature bats increased, hypothesized to be a result of predation by the brown tree snake (Wiles et al. 1995, pp. 33–34, 39–42). With bat abundance continuing to decline in the 2000s, the island's Mariana fruit bat population currently fluctuates between 15 and 45 individuals (Mildenstein and Johnson 2017, p. 24; USFWS 2017, p. 54). Even if the little Mariana fruit bat persisted at undetectable numbers for some time after its last confirmed collection in 1968, it is highly likely the little Mariana fruit bat experienced the same pattern of decline that we are now seeing in the Mariana fruit bat.

Time Since Last Detection

As stated above, the little Mariana fruit bat was last collected in northern Guam in 1968 (Baker 1948, p. 146). Intensive survey efforts conducted by Guam DAWR and other researchers in subsequent decades have failed to locate the species. Decades of monthly (and, later, annual) surveys for the related Mariana fruit bat by qualified personnel in northern Guam have failed to detect the little Mariana fruit bat (Wheeler and Aguon 1978, entire; Wheeler 1979, entire; Wiles 1987, entire; Wiles 1987, pp. 153–154; USFWS 1990, p. 7).

III. Analysis

Like the majority of bat species in the genus *Pteropus,* specific biological traits likely exacerbated the little Mariana fruit bat's susceptibility to human activities and natural events (Wilson and Graham 1992, pp. 1–8). For example, low fecundity in the genus due to late reproductive age and small broods (1 to 2 young annually) inhibits population rebound from catastrophic events such as typhoons, and from slow progression of habitat loss and hunting pressure that we know occurred over time. The tendency of *Pteropus* bats to roost together in sizeable groups or colonies in large trees rising above the

surrounding canopy makes them easily detected by hunters (Wilson and Graham 1992, p. 4). Additionally, *Pteropus* bats show a strong tendency for roost site fidelity, often returning to the same roost tree year after year to raise their young (Wilson and Graham 1992, p. 4; Mildenstein and Johnson 2017, pp. 54, 68). This behavior likely allowed hunters and (later) poachers to easily locate and kill the little Mariana fruit bat and, with the introduction of firearms, kill them more efficiently (Wiles 1987, pp. 151, 154; USFWS 2009, pp. 24–25; Mildenstein and Johnston 2017, pp. 41–42). The vulnerability of the entire genus *Pteropus* is evidenced by the fact that 6 of the 62 species in this genus have become extinct in the last 150 years (including the little Mariana fruit bat). The International Union for Conservation of Nature (IUCN) categorizes an additional 37 species in this genus at risk of extinction (Almeida et al. 2014, p. 84).

In discussing survey results for the Mariana fruit bat in the late 1980s, experts wrote that the level of illegal poaching of bats on Guam remained extremely high, despite the establishment of several legal measures to protect the species beginning in 1966 (Wiles 1987, p. 154). They also wrote about the effects of brown tree snake predation on various fruit bat species (Savidge 1987, entire; Wiles 1987, pp. 155–156). To date, there is only one documented instance of the brown tree snake preying upon the Mariana fruit bat; in that case, three young bats were found within the stomach of a snake (Wiles 1987, p. 155). However, immature *Pteropus* pups are particularly vulnerable to predators between approximately 3 weeks and 3 months of age. During this timeframe, the mother bats stop taking their young with them while they forage in the evenings, leaving them alone to wait at their roost tree (Wiles 1987, p. 155).

Only three specimens of little Mariana fruit bat have ever been collected, all on the island of Guam, and no other confirmed captures or observations of this species exist. Based on the earliest records, the species was already rare in the early 1900s. Therefore, since its discovery, the little Mariana fruit bat likely experienced greater susceptibility to a variety of factors because of its small population size. Predation by the brown tree snake, alteration and loss of habitat, increased hunting pressure, and possibly competition with the related Mariana fruit bat for the same resources under the increasingly challenging conditions contributed to the species' decreased ability to persist.

It is highly likely the brown tree snake, the primary threat thought to be the driver of multiple bird and reptile species extirpations and extinctions on Guam, has been present throughout the little Mariana fruit bat's range for at least the last half-century, and within the last northern refuge in northern Guam since at least the 1980s. Because of its life history and the challenges presented by its small population size, we conclude that the little Mariana fruit bat was extremely susceptible to predation by the brown tree snake.

IV. Conclusion

At the time of listing in 1984, hunting and loss of habitat were considered the primary threats to the little Mariana fruit bat. The best available information now indicates that the little Mariana fruit bat is extinct. The species appears to have been vulnerable to pervasive, rangewide threats including habitat loss, poaching, and predation by the brown tree snake. Since its last detection in 1968, qualified observers have conducted surveys and searches throughout the range of the little Mariana fruit bat but have not detected the species. Available information indicates that the species was not able to persist in the face of anthropogenic and environmental stressors, and we conclude that the best available scientific and commercial information indicates that the species is extinct.

Birds

Bachman's Warbler (Vermivora Bachmanii)

I. Background

Please refer to our proposed rule, published on September 30, 2021 (86 FR 54298), for a thorough review of the species background and legal history. Here, we will briefly summarize the species background. On March 11, 1967, we listed the Bachman's warbler as endangered under the Endangered Species Preservation Act of 1966 (32 FR 4001), as a result of the loss of breeding and wintering habitat. Two 5-year reviews were completed for the species on February 9, 2007 (initiated on July 26, 2005; see 70 FR 43171), and May 6, 2015 (initiated on September 23, 2014; see 79 FR 56821). Both 5-year reviews recommended that if the species was not detected within the following 5 years, it would be appropriate to delist due to extinction.

The Bachman's warbler was first named in 1833 as *Sylvia bachmanii* based on a bird observed in a swamp near Charleston, South Carolina (American Ornithologists' Union (AOU) 1983, pp. 601–602). The species was found in the southeastern portions of the United States from the south Atlantic and Gulf Coastal Plains. Historically, the bulk of the species' population left the North American mainland each fall for Cuba and Isle of Pines (Dingle 1953, pp. 67–68, 72–73).

Migratory habitat preferences appear to have differed from winter and breeding habitat preferences in that the bird used or tolerated a wider range of conditions and vegetative associations during migration. Bachman's warbler typically nested in low, wet, forested areas containing variable amounts of water, but usually with some permanent water. Nests were typically found in shrubs low to the ground from late March through June, and average known clutch size was 4.2 (with a range of 3 to 5) (Hamel 2018, pp. 14–15). During the winter in Cuba, it was found in a wider variety of habitats across the island including forests, ranging from dry, semi-deciduous forests to wetlands, and even in forested urban spaces (Hamel 1995, p. 5). Life expectancy is unknown but was likely 7 years, which is the documented lifespan of the two species most closely related to Bachman's warbler, blue-winged warbler (*V. cyanoptera*) and golden-winged warbler (*V. chrysoptera*) (Gill et al. 2020 and Confer et al. 2020, respectively).

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

The Bachman's warbler was one of the smallest warblers, with a total length of 11.0 to 11.5 cm. Males were easy to distinguish from other warblers. However, the drab coloration of the females and immature birds made positive identification difficult (Hamel and Gauthreaux 1982, p. 235). Additionally, females were much more difficult to identify because variability in plumage was greater. Immature females were also most likely to be confused with other similarly drab warblers.

The song of the Bachman's warbler was a fast series of buzzy ''zeeps'' usually ending with a short, downward whistled note given by both sexes (Hamel 2020, Sounds and Vocal Behavior). This species may have been difficult to differentiate by call alone, as its call was somewhat reminiscent of the pulsating trill of the northern parula (*Parula americana*) (Curson et al. 1994, p. 95), and only four recordings exist, all from the 1950s (two cited in Hamel 2018, p. 32, and all four in Cornell Lab of Ornithology, Macaulay Library), to guide ornithologists on distinguishing it by sound.

Despite the fact that it could be mistaken for the northern parula, Bachman's warbler was of high interest to birders, and guides have been published specifically to aid in field identification (Hamel and Gauthreaux 1982, entire). As a result, substantial informal and formal effort has been expended searching for the bird and verifying potential sightings as outlined below (see ''Survey Effort'').

Survey Effort

Although Bachman's warbler was first described in 1833, it remained relatively unnoticed for roughly the next 50 years. Population estimates are qualitative in nature and range from rare to abundant (Service 1999, pp. 4–448). Populations were probably never large and were found in ''some numbers'' between 1890 and 1920, but afterwards populations appeared to be very low (Hamel 2018, pp. 16–18). For instance, several singing males were reported in Missouri and Arkansas in 1897 (Widmann 1897, p. 39), and Bachman's warbler was seen as a migrant along the lower Suwannee River in flocks of several species (Brewster and Chapman 1891, p. 127). The last confirmed nest was documented in 1937 (Curson et al. 1994, p. 96). A dramatic decline occurred sometime between the early 1900s and 1940 or 1950. Recognition of this decline resulted in the 1967 listing of the species (see 32 FR 4001; March 11, 1967) under the Endangered Species Preservation Act of 1966.

Between 1975 and 1979, an exhaustive search was conducted in South Carolina, Missouri, and Arkansas. No Bachman's warblers were located (Hamel 1995, p. 10). The last (though unconfirmed) sighting in Florida was from a single bird observed near Melbourne in 1977. In 1989, an extensive breeding season search was conducted on Tensas National Wildlife Refuge in Louisiana. Six possible Bachman's warbler observations occurred but could not be documented sufficiently to meet acceptability criteria established for the study (Hamilton 1989, as cited in Service 2015, p. 4).

An experienced birder reported multiple, possible sightings of Bachman's warbler at Congaree National Park, South Carolina, in 2000 and 2001. These included hearing a male and seeing a female. In 2002, the National Park Service partnered with the Service and the Atlantic Coast Joint Venture to investigate these reports. Researchers searched over 3,900 acres of forest during 166 hours of observation in March and April; however, no Bachman's warbler sightings or vocalizations were confirmed. As noted previously, females and immature birds are difficult to positively identify. Males (when seen) are more easily distinguishable from other species. Researchers trying to verify the sightings traced several promising calls back to northern parulas and finally noted that they were confident the species would have been detected had it been present (Congaree National Park 2020, p. 3).

In several parts of the Bachman's warbler's range, relatively recent searches (since 2006) for ivory-billed woodpecker also prompted more activity in appropriate habitat for the Bachman's warbler. Much of the search period for ivory-billed woodpecker is during the winter, and the searches usually continued until the end of April, when the Bachman's warbler would be expected in its breeding range. Because the Bachman's warbler was a very early migrant, many knowledgeable searchers looking for ivory-billed woodpeckers would have had opportunities to encounter this warbler as early as February across the southeastern United States, yet no putative encounters were reported. Given that Bachman's warbler habitat overlaps with ivory-billed woodpecker habitat, the probability that the Bachman's warbler would be detected, if present, has recently increased (Service 2015, pp. 5–6). Further, in general, substantial informal effort has been expended searching for the Bachman's warbler because of its high interest among birders (Service 2015, p. 5). Despite these efforts, the Bachman's warbler has not been observed in the United States in more than three decades. With a likely maximum lifespan of 7 years, the time period through which this species has not been seen constitutes at least 7 generations, and the time period since its last confirmed breeding constitutes more than 10 generations.

In Cuba, the species' historical wintering range, the last ornithologist to see the species noted that the species was observed twice in the 1960s in the Zapata Swamp: one sighting in the area of a modern-day hotel in Laguna del Tesoro and the other one in the Santo Tomas, Zanja de la Cocodrila area. Some later potential observations (*i.e.,* 1988) in the same areas were thought to be a female common yellowthroat (*Geothlypis trichas*) (Navarro 2020, pers. comm.). A single bird was reported in Cuba in 1981 at Zapata Swamp (Garrido 1985, p. 997; Hamel 2018, p. 20). However, additional surveys in Cuba by Hamel and Garrido in 1987 through 1989 did not confirm additional birds (Navarro 2020, pers. comm.). There have been no sightings or bird surveys in recent years in Cuba, and all claimed sightings of Bachman's warbler from 1988 onwards have been rejected by the ornithological community (Navarro 2020, pers. comm.). Curson et al. (1994, p. 96) considers all sightings from 1978 through 1988 in Cuba as unconfirmed.

Time Since Last Detection

After 1962, reports of the Bachman's warbler in the United States have not been officially accepted, documented observations (Chamberlain 2003, p. 5). Researchers have been thorough and cautious in verification of potential sightings, and many of the more recent ones could not be definitively verified. Bachman's warbler records from 1877–2001 in North America are characterized as either relying on physical evidence or on independent expert opinion, or as controversial sightings (Elphick et al. 2010, pp. 8, 10). In Cuba, no records have been verified since the 1980s (Navarro 2020, pers. comm.).

Other Considerations Applicable to the Species' Status

At breeding grounds, the loss of habitat from clearing of large tracts of palustrine (*i.e.,* having trees, shrubs, or emergent vegetation) wetland beginning in the 1800s was a major factor in the decline of the Bachman's warbler. Most of the palustrine habitat in the Mississippi Valley (and large proportions in Florida) was historically converted to agriculture or affected by other human activities (Fretwell et al. 1996, pp. 8, 10, 124, 246). Often the higher, drier portions of land that the Bachman's warbler required for breeding were the first to be cleared because they were more accessible and least prone to flooding (Hamel 1995, pp. 5, 11; Service 2015, p. 4).

During World Wars I and II, many of the remaining large tracts of old growth bottomland forest were cut, and the timber was used to support the war effort (Jackson 2020, Conservation and Management, p. 2). At the wintering grounds of Cuba, extensive loss of primary forest wintering habitat occurred due to the clearing of large areas of the lowlands for sugarcane production (Hamel 2018, p. 24). Hurricanes also may have caused extensive damage to habitat and direct loss of overwintering Bachman's warblers. Five hurricanes occurred between November 1932 and October 1935. Two storms struck western Cuba in October 1933, and the November 1932 hurricane is considered one of the most destructive ever recorded. These hurricanes, occurring when Bachman's warblers would have been present at their wintering grounds in Cuba, may

have resulted in large losses of the birds (Hamel 2018, p. 19). The dramatic reduction in encounter frequency, beginning in the late 1930s following the string of hurricanes in Cuba, never reversed, strongly suggesting that these storms, combined with accumulated habitat loss in breeding grounds, diminished viability of the Bachman's warbler as it approached extinction.

III. Analysis

As early as 1953, Bachman's warbler was reported as one of the rarest songbirds in North America (Dingle 1953, p. 67). The species may have gone extinct in North America by 1967 (Elphick et al. 2010, p. 619). Despite extensive efforts to document presence of the species, no new observations of the species have been verified in the United States or Cuba in several decades (Elphick et al. 2010, supplement; Navarro 2020, pers. comm.). Given the likely lifespan of the species, it has not been observed in several generations.

IV. Conclusion

As far back as 1977, Bachman's warbler has been described as being on the verge of extinction (Hooper and Hamel 1977, p. 373) and the rarest songbird native to the United States (Service 1999, pp. 4–445). The species has not been seen in the United States or Cuba since the 1980s, despite extensive efforts to locate it and verify potential sightings. Therefore, we conclude that the best available scientific and commercial information indicates that the species is extinct.

Bridled White-Eye (Zosterops Conspicillatus Conspicillatus)

I. Background

Please refer to our proposed rule, published on September 30, 2021 (86 FR 54298), for a thorough review of the species background and legal history. Here, we will briefly summarize the species background. On August 27, 1984, we listed the bridled white-eye (Nossa in the Chamorro language) as endangered (49 FR 33881). The species was last observed in 1983, and the 1984 final listing rule for the bridled white-eye noted that the species ''may be the most critically endangered bird under U.S. jurisdiction'' (49 FR 33881, August 27, 1984, p. 49 FR 33883), citing disease and predation by nonnative predators, including the brown tree snake, as the likely factors contributing to its rarity (49 FR 33881, August 27, 1984, p. 49 FR 33884). The most recent 5-year status review, completed in 2019 (initiated on May 7, 2018; see 83 FR 20088), recommended delisting due to extinction, based on continued lack of detections and the pervasive rangewide threat posed by the brown tree snake (USFWS 2019, p. 10).

At the time of listing, the bridled white-eye on Guam was classified as one subspecies within a complex of bridled white-eye populations found in the Mariana Islands. The most recent taxonomic work (Slikas et al. 2000, p. 360) continued to classify the Guam subspecies within the same species as the bridled white-eye populations currently found on Saipan, Tinian, and Aguiguan in the Commonwealth of the Northern Mariana Islands (*Z. c. saypani*) but considered the Rota population (*Z. rotensis;* now separately listed as endangered under the Act) to be a distinct species.

Endemic only to Guam, within the Mariana Islands, the bridled white-eye was a small (0.33 ounce or 9.3 grams), green and yellow, warbler-like forest bird with a characteristic white orbital ring around each eye (Jenkins 1983, p. 48). The available information about the life history of the species is sparse, based on a few early accounts in the literature (Seale 1901, pp. 58–59; Stophlet 1946, p. 540; Marshall 1949, p. 219; Baker 1951, pp. 317–318; Jenkins 1983, pp. 48–49). Nonterritorial and often observed in small flocks, the species was a canopy-feeding insectivore that gleaned small insects from the twigs and branches of trees and shrubs (Jenkins 1983, p. 49). Although only minimal information exists about the bridled white-eye's nesting habits and young, observations of nests during several different months suggests the species bred year-round (Marshall 1949, p. 219; Jenkins 1983, p. 49). No information is available regarding longevity of the bridled white-eye, but lifespans in the wild for other white-eyes in the same genus range between 5 and 13 years (Animal Diversity Web 2020; The Animal Aging and Longevity Database 2020; *WorldLifeExpectancy.com* 2020).

The bridled white-eye was reported to be one of the more common Guam bird species between the early 1900s and the 1930s (Jenkins 1983, p. 5). However, reports from the mid- to late-1940s indicated the species had perhaps become restricted to certain areas on Guam (Baker 1951, p. 319; Jenkins 1983, p. 50). By the early- to mid-1970s, the bridled white-eye was found only in the forests in the very northern portion of Guam (Wiles et al. 2003, p. 1353). It was considered rare by 1979, causing experts to conclude that the species was nearing extinction (Jenkins 1983, p. 50).

By 1981, the bridled white-eye was known to inhabit only a single 395-acre (160-hectare) limestone bench known as Pajon Basin in a limestone forest at Ritidian Point, an area that later became the Guam National Wildlife Refuge. Nestled at the base of towering limestone cliffs of about 426 feet (130 meters), the site was bordered by adjoining tracts of forest on three sides, and ocean on the northern side (Wiles et al. 2003, p. 1353). Pajon Basin was also the final refuge for many of Guam's native forest bird species and was the last place where 10 of Guam's forest bird species were still observed together in one locality at historical densities (Savidge 1987, p. 661; Wiles et al. 2003, p. 1353).

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

The bridled white-eye was described as active and occurred in small flocks of 3 to 12 individuals (Jenkins 1983, p. 48). Although apparently not as vocal as its related subspecies on the other Mariana Islands, the bridled white-eye was observed singing and typically vocalized with ''chipping calls'' while flocking, less so during foraging (Jenkins 1983, p. 48). Although perhaps not correctly identified as a ''secretive'' or ''cryptic'' species (Amidon 2000, pp. 14–15), the detectability of the related Rota bridled white-eye is greatest during surveys when it is close to the observer, relative to other species of birds that are detected at further distances. While we are unaware of surveys for the bridled white-eye using alternative methodologies specific for rare or secretive bird species, we conclude there is still sufficient evidence of extinction based upon the large body of literature confirming the impacts of the brown tree snake on Guam (see discussion below under ''III. Analysis'').

Survey Effort

During a multi-year VCP study at Pajon Basin consisting of annual surveys between 1981 and 1987, observations of the bridled white-eye drastically declined in just the first 3 years of the study. In 1981, 54 birds were observed, and in 1982, 49 birds were documented, including the last observation of a family group (with a fledging) of the species. One year later, during the 1983 survey, only a single individual bridled white-eye was sighted. Between 1984 and 1987, researchers failed to detect the species within this same 300-acre (121-hectare) site (Beck 1984, pp. 148–149).

Between the mid- and late-1980s, experts had already begun to hypothesize that the bridled white-eye had become extinct (Jenkins 1983, p. 50;

Savidge 1987, p. 661). Although human access has become more restricted within portions of Andersen Air Force Base since 1983, the Guam DAWR has, to date, continued annual roadside counts across the island as well as formal transect surveys in northern Guam in areas previously inhabited by the bridled white-eye.

Time Since Last Detection

The species remains undetected since the last observation in Pajon Basin in 1983 (Wiles 2018, pers. comm.; Quitugua 2018, pers. comm.; Aguon 2018, pers. comm.). Researchers failed to observe the species at the Pajon Basin during the annual surveys between 1984 and 1987, and during subsequent intermittent avian surveys in northern Guam in areas where this species would likely occur (Savidge 1987, p. 661; Wiles et al. 1995, p. 38; Wiles et al. 2003, entire).

III. Analysis

The brown tree snake is estimated to be responsible for the extinction, extirpation, or decline of 2 bat species, 4 reptiles, and 17 of Guam's 22 (77 percent) native bird species, including all of the native forest bird species (Wiles et al. 2003, p. 1358; Rodda and Savidge 2007, p. 307). The most comprehensive study of the decline (Wiles et al. 2003, entire) indicated that 22 bird species were severely impacted by the brown tree snake. Observed bird species declines of greater than or equal to 90 percent occurred rapidly, averaging 8.9 years from invasion by the snake. Additionally, birds that nested and roosted in locations where the brown tree snake was uncommon had a greater likelihood of coexisting with the snake. Bird species with large clutch sizes and large body sizes also exhibited longer persistence, although large body size delayed but did not prevent extirpation. Measuring a mere 0.33 ounces (9.3 grams), the bridled white-eye was relatively small, and its nests occurred in areas accessible to brown tree snakes (Baker 1951, pp. 316–317; Jenkins 1983, pp. 49–50).

We used a recent analytical tool that assesses information on threats to infer species extinction based on an evaluation of whether identified threats are sufficiently severe and prolonged to cause local extinction, as well as sufficiently extensive in geographic scope to eliminate all occurrences (Keith et al. 2017, p. 320). Applying this analytical approach to the bridled white-eye, we examined years of research and dozens of scientific publications and reports that indicate that the effects of predation by the brown tree snake have been sufficiently severe, prolonged, and extensive in geographic scope to cause widespread range contraction, extirpation, and extinction for several birds and other species. Based on this analysis, we conclude that the bridled white-eye is extinct and brown tree snake predation was the primary causal agent.

IV. Conclusion

At the time of its listing in 1984, disease and predation by nonnative predators, including the brown tree snake, were considered the primary threats to the bridled white-eye. The best available information now indicates that the bridled white-eye is extinct. The species appears to have been vulnerable to the pervasive, rangewide threat of predation from the brown tree snake. Since its last detection in 1983, qualified observers have conducted surveys and searches throughout the range of the bridled white-eye and have not detected the species. Available information indicates that the species was not able to persist in the face of environmental stressors, and we conclude that the best available scientific and commercial information indicates that the species is extinct.

Kauai Akialoa (Akialoa Stejnegeri)

I. Background

Please refer to our proposed rule, published on September 30, 2021 (86 FR 54298), for a thorough review of the species background and legal history. Here, we will briefly summarize the species background. On March 11, 1967, we listed the Kauai akialoa (listed as *Hemignathus stejnegeri*), a Hawaiian honeycreeper, as endangered (32 FR 4001). This bird was included in the Kauai Forest Birds Recovery Plan (USFWS 1983, p. 1), and the Revised Recovery Plan for Hawaiian Forest Birds (USFWS 2006, p. 2–86). At the time of listing, we considered Kauai akialoa to have very low population numbers and to be threatened by habitat loss, avian disease, and predation by rats (*Rattus* spp.). The last confirmed observation of the species was in 1965, although there was an unconfirmed sighting in 1969 (Reynolds and Snetsinger 2001, p. 142). The most recent 5-year status review, completed in 2019, recommended delisting due to extinction based on consideration of additional information about the biological status of the species, as discussed below (USFWS 2019, pp. 5, 10).

The life history of Kauai akialoa is poorly known and based mainly on observations from the end of the 19th century (USFWS 2006, p. 2–86). There is no information on the lifespan of the Kauai akialoa nor its threats when it was extant. The species was widespread on Kauai and occupied all forest types above 656 feet (200 meters) elevation (Perkins 1903, pp. 369, 422, 426). Its historical range included nearly all Kauai forests visited by naturalists at the end of the 19th century. After a gap of many decades, the species was seen again in the 1960s, when one specimen was collected (Richardson and Bowles 1964, p. 30).

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

The Kauai akialoa was a large (6.7 to 7.5 inches, or 17 to 19 centimeters, total length), short-tailed Hawaiian honeycreeper with a very long, thin, curved bill, the longest bill of any historically known Hawaiian passerine. The plumage of both sexes was olive-green; males were more brightly colored, were slightly larger, and had a somewhat longer bill (USFWS 2006, p. 2–86). The Kauai akialoa's relatively large size and distinctive bill suggest that if it were extant, it would be detectable by sight and recognized.

Survey Effort

A comprehensive survey of Hawaiian forest birds was initiated in the 1970s using the VCP method (Scott et al. 1986, entire). Please refer to the ''Summary of Comments and Recommendations'' for a description of the VCP method. VCP surveys have been the primary method used to count birds in Hawaii; however, it is not appropriate for all species and provides poor estimates for extremely rare birds (Camp et al. 2009, p. 92). In recognition of this issue, the RBS was undertaken from 1994 to 1996, to update the status and distribution of 13 ''missing'' Hawaiian forest birds (Reynolds and Snetsinger 2001, pp. 134–137). The RBS was designed to improve efficiency in the search for extremely rare species, using the method of continuous observation during 20- to 30-minute timed searches in areas where target species were known to have occurred historically, in conjunction with audio playback of species vocalizations (when available). Several recent surveys and searches, including the RBS, have been unsuccessful in detecting Kauai akialoa despite intensive survey efforts by wildlife biologists from 1968 to 1973, and in 1981, 1989, 1993, 1994, 2000, 2005, and 2011 to 2018 (Hawaii Department of Land and Natural Resources unpubl. data; Reynolds and Snetsinger 2001, entire; Crampton et al.

2017, entire; Crampton 2018, pers. comm.). An unconfirmed 1969 report may have been the last sighting of Kauai akialoa (Conant et al. 1998, p. 15). Kauai akialoa has been presumed likely extinct for some time (Reynolds and Snetsinger 2001, p. 142).

In addition, extensive time has been spent by qualified observers in the historical range of the Kauai akialoa searching for the small Kauai thrush (*Myadestes palmeri*), akekee (*Loxops caeruleirostris*), and akikiki (or Kauai creeper) (*Oreomystis bairdi*). HFBSs were conducted in 1981, 1989, 1994, 2000, 2005, 2007, 2008, 2012, and 2018 (Paxton et al. 2016, entire; Paxton et al. 2020, entire). The Kauai Forest Bird Recovery Project (KFBRP) conducted occupancy surveys for the small Kauai thrush in Kokee State Park, Hono O NaPali NAR, Na Pali Kona Forest Reserve, and Alakai Wilderness Preserve, from 2011 to 2013 (Crampton et al. 2017, entire), and spent over 1,500 person-hours per year from 2015 to 2018 searching for akikiki and akekee nests. During the HFBS in 2012 and 2018, occupancy surveys and nest searches did not yield any new detections of Kauai akialoa. The KFBRP conducted mist-netting in various locations within the historical range of Kauai akialoa from 2006 through 2009, and from 2011 through 2018, and no Kauai akialoa were caught or encountered (Crampton 2018, pers. comm.).

Time Since Last Detection

The Kauai akialoa has not been seen since the 1960s, despite efforts by ornithologists (Conant et al. 1998, p. 15) and birders, and intensive survey efforts by wildlife biologists spanning 1968 to 2018 (USFWS 1983, p. 2; Hawaii Department of Land and Natural Resources unpubl. data; Reynolds and Snetsinger 2001, entire; Crampton et al. 2017, entire; Crampton 2018, pers. comm.). Another approach used to determine whether extremely rare species are likely extinct or potentially still extant is to calculate the probability of a species' extinction based on time (years) since the species was last observed (Elphick et al. 2010, p. 620). This approach, when applied to extremely rare species, has the drawback that an incorrect assignment of species extinction may occur due to inadequate survey effort and/or insufficient time by qualified observers spent in the area where the species could still potentially exist. Using 1969 as the last credible sighting of Kauai akialoa, the authors' estimated date for the species' extinction is 1973, with 95 percent confidence that the species was extinct by 1984.

III. Analysis

The various bird species in the subfamily Drepanidinae (also known as the Hawaiian honeycreepers), which includes Kauai akialoa, are highly susceptible to introduced avian disease. They are particularly susceptible to avian malaria (*Plasmodium relictum*), which results in high rates of mortality. At elevations below approximately 4,500 feet (1,372 meters) in Hawaii, the key factor driving disease epizootics (outbreaks) of pox virus (*Avipoxvirus*) and avian malaria is the seasonal and altitudinal distribution and density of the primary vector of these diseases, the mosquito *Culex quinquefasciatus* (Atkinson and Lapointe 2009a, pp. 237–238, 245–246).

We relied on a recently developed analytic tool that uses information on threats to infer species extinction based on an evaluation of whether identified threats are sufficiently severe and prolonged to cause local extinction, and sufficiently extensive in geographic scope to eliminate all occurrences (Keith et al. 2017, p. 320). The disappearance of many Hawaiian honeycreeper species over the last century from areas below approximately 4,500 feet elevation points to effects of avian disease having been sufficiently severe and prolonged, and extensive in geographic scope, to cause widespread species' range contraction and possible extinction. It is highly likely avian disease is the primary causal factor for the disappearance of many species of Hawaiian honeycreepers from forested areas below 4,500 feet on the islands of Kauai, Oahu, Molokai, and Lanai (Scott et al. 1986, p. 148; Banko and Banko 2009, pp. 52–53; Atkinson and Lapointe 2009a, pp. 237–238).

It is widely established that small populations of animals are inherently more vulnerable to extinction because of random demographic fluctuations and stochastic environmental events (Mangel and Tier 1994, p. 607; Gilpin and Soulé 1986, pp. 24–34). Formerly widespread populations that become small and isolated often exhibit reduced levels of genetic variability, which diminishes the species' capacity to adapt and respond to environmental changes, thereby lessening the probability of long-term persistence (*e.g.,* Barrett and Kohn 1991, p. 4; Keller and Waller 2002, p. 240; Newman and Pilson 1997, p. 361). As populations are lost or decrease in size, genetic variability is reduced, resulting in increased vulnerability to disease and restricted potential evolutionary capacity to respond to novel stressors (Spielman et al. 2004, p. 15261; Whiteman et al. 2006, p. 797). As numbers decreased historically, effects of small population size were very likely to have negatively impacted Kauai akialoa, reducing its potential for long-term persistence. Surveys and searches have been unsuccessful in detecting Kauai akialoa (refer to ''Survey Effort'' discussion, above).

IV. Conclusion

At the time of listing in 1967, the Kauai akialoa faced threats from habitat loss, avian disease, and predation by introduced mammals. The best available information now indicates that the Kauai akialoa is extinct. The species appears to have been vulnerable to introduced avian disease. In addition, the effects of small population size likely limited the species' genetic variation and adaptive capacity, thereby increasing the vulnerability of the species to environmental stressors including habitat loss and degradation. Since its last detection in 1969, qualified observers have conducted extensive surveys, and searches but have not detected the species. Available information indicates that the species was not able to persist in the face of environmental stressors, and we conclude that the best available scientific and commercial information indicates that the species is extinct.

Kauai Nukupuu (Hemignathus Hanapepe)

I. Background

Please refer to our proposed rule, published on September 30, 2021 (86 FR 54298), for a thorough review of the species background and legal history. Here, we will briefly summarize the species background. On March 11, 1967, we listed the Kauai nukupuu as endangered (32 FR 4001). This bird was included in the Kauai Forest Birds Recovery Plan (USFWS 1983, p. 1), as well as the Revised Recovery Plan for Hawaiian Forest Birds (USFWS 2006, p. viii). At the time of listing, observations of only two individuals had been reported during that century (USFWS 1983, p. 3). The last confirmed observation (based on independent expert opinion and physical evidence) of the species was in 1899 (Eliphick et al. 2010, p. 620). The latest 5-year status review completed in 2019 recommended delisting due to extinction based on consideration of additional information about the biological status of the species, as discussed below (USFWS 2019, pp. 4–5, 10).

The historical record provides little information on the life history of Kauai

nukupuu (USFWS 2006, p. 2–89). There is no specific information on the lifespan or breeding biology of Kauai nukupuu, although it is presumed to be similar to its closest relative, akiapolaau (*Hemignathus munroi,* listed as *H. wilsoni*), a honeycreeper from the island of Hawaii. The last confirmed observation (based on independent expert opinion and physical evidence) of Kauai nukupuu was in 1899 (Eliphick et al. 2010, p. 620); however, there was an unconfirmed observation in 1995 (Conant et al. 1998, p. 14).

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

Kauai nukupuu was a medium-sized, approximately 23-gram (0.78-ounce), Hawaiian honeycreeper (family Fringillidae, subfamily Drepanidinae) with an extraordinarily thin, curved bill, slightly longer than the bird's head. The lower mandible was half the length of the upper mandible. Adult male plumage was olive-green with a yellow head, throat, and breast, whereas adult female and immature plumage consisted of an olive-green head and yellow or yellowish gray under-parts (USFWS 2006, p. 2–89). The long, curved, and extremely thin bill of Kauai nukupuu, in combination with its brightly colored plumage, would have made this bird highly detectable to ornithologists and birders had it persisted (USFWS 2006, p. 2–89). No subsequent sightings or vocalizations have been documented since the unconfirmed sighting in 1995, despite extensive survey efforts.

Survey Effort

In the absence of early historical surveys, the extent of the geographical range of the Kauai nukupuu is unknown. Several recent surveys and searches, including the RBS, have been unsuccessful in detecting Kauai nukupuu despite intensive survey efforts by wildlife biologists from 1968 to 1973, and in 1981, 1989 1993, 1994, 2000, 2005, and 2011 to 2018 (Hawaii Department of Land and Natural Resources unpubl. data; Reynolds and Snetsinger 2001, entire; Crampton et al. 2017, entire; Crampton 2018 pers. comm.). During the RBS, Kauai nukupuu was not detected. The lack of detections combined with analysis of detection probability ($P \geq 0.95$) suggested that the possible population count was fewer than 10 birds in 1996 (Reynolds and Snetsinger 2001, p. 142).

Extensive time has been spent by qualified observers in the historical range of the Kauai nukupuu searching for the small Kauai thrush, akekee, and akikiki. HFBSs were conducted in 1981, 1989, 1994, 2000, 2005, 2007, 2008, 2012, and 2018 (Paxton et al. 2016, entire; Paxton et al. 2020, entire). During the HFBSs in 2012 and 2018, occupancy surveys and nest searches did not yield any new detections of the Kauai nukupuu. The KFBRP conducted mist-netting in various locations within the historical range of the Kauai nukupuu from 2006 through 2009, and from 2011 through 2018, and no Kauai nukupuu were caught or encountered (Crampton 2018, pers. comm.). Despite contemporary search efforts, the last credible sighting of Kauai nukupuu occurred in 1899.

Time Since Last Detection

Using 1899 as the last credible sighting of Kauai nukupuu based on independent expert opinion and physical evidence, the estimated date for the species' extinction was 1901, with 95 percent confidence that the species was extinct by 1906 (Elphick et al. 2010, p. 620).

III. Analysis

Some of the reported descriptions of this species better match the Kauai amakihi (*Chlorodrepanis stejnegeri*) (USFWS 2006, p. 2–90). Although skilled observers reported three unconfirmed sightings of Kauai nukupuu in 1995 (Reynolds and Snetsinger 2001, p. 142), extensive hours of searching within the historical range failed to detect any individuals. The last credible sightings of Kauai nukupuu was in 1899, based on independent expert opinion and physical evidence (Elphick et al. 2010, p. 620). It was estimated that 1901 was the year of extinction, with 95 percent confidence that the species was extinct by 1906. The species was likely vulnerable to the persistent threats of avian disease combined with habitat loss and degradation, which remain drivers of extinction for Hawaiian forest birds.

IV. Conclusion

At the time of listing in 1967, the Kauai nukupuu had not been detected for almost 70 years. Since its last detection in 1899, qualified observers have conducted extensive surveys and searches throughout the range of the Kauai nukupuu and have not detected the species. Available information indicates that the species was not able to persist in the face of environmental stressors, and we conclude that the best available scientific and commercial information indicates that the species is extinct.

Kauai ʻoʻo (Moho Braccatus)

I. Background

Please refer to our proposed rule, published on September 30, 2021 (86 FR 54298), for a thorough review of the species background and legal history. Here, we will briefly summarize the species background. On March 11, 1967, we listed the Kauai ʻoʻo (*Moho braccatus*) as endangered (32 FR 4001). This bird was included in the Kauai Forest Birds Recovery Plan (USFWS 1983, p. 1), as well as the Revised Recovery Plan for Hawaiian Forest Birds (USFWS 2006, p. viii). At the time of listing, the population size was estimated at 36 individuals (USFWS 1983, p. 3). Threats to the species included the effects of low population numbers, habitat loss, avian disease, and predation by introduced mammals. The last plausible record of a Kauai ʻoʻo was a vocal response to a recorded vocalization played by a field biologist on April 28, 1987, in the locality of Halepaakai Stream. The latest 5-year status review completed in 2019 recommended delisting due to extinction based on consideration of new information about the biological status of the species, as discussed below (USFWS 2019, pp. 5, 10).

The Kauai ʻoʻo measured 7.7 inches (19.5 centimeters) and was somewhat smaller than the *Moho* species on the other islands. It was glossy black on the head, wings, and tail; smoky brown on the lower back, rump, and abdomen; and rufous-brown on the upper tail coverts. It had a prominent white patch at the bend of the wing. The thigh feathers were golden yellow in adults and black in immature birds (Berger 1972, p. 107). The Kauai ʻoʻo is one of four known Hawaiian species of the genus *Moho* and one of five known Hawaiian bird species within the family Mohoidae (Fleischer et al. 2008, entire). Its last known habitat was the dense ohia (*Metrosideros polymorpha*) forest in the valleys of Alakai Wilderness Preserve. It reportedly fed on various invertebrates and the fruits and nectar from ohia, lobelia, and other flowering plants. There is no information on the lifespan of the Kauai ʻoʻo.

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

The vocalizations of this species were loud, distinctive, and unlikely to be overlooked. The song consisted of loud whistles that have been described as flute-like, echoing, and haunting, suggesting that detectability would be high in remaining suitable habitat if the

Kauai ʻoʻo still existed (USFWS 2006, p. 2–47).

Survey Effort

In the absence of early historical surveys, the extent of the geographical range of the Kauai ʻoʻo cannot be reconstructed. The comprehensive surveys of Hawaiian forest birds are described above under ''Survey Effort'' for the Kauai akialoa. Several recent surveys and searches, including the VCP and RBS, have been unsuccessful in detecting Kauai ʻoʻo despite intensive survey efforts by wildlife biologists from 1968 to 1973, and in 1981, 1989 1993, 1994, 2000, 2005, and 2011 to 2018 (Hawaii Department of Land and Natural Resources unpubl. data; Reynolds and Snetsinger 2001, entire; Crampton et al. 2017, entire; Crampton 2018 pers. comm.). During the RBS, coverage of the search area was extensive; therefore, there was a high probability of detecting a Kauai ʻoʻo. None were detected, and it was concluded the Kauai ʻoʻo was likely extinct ($P \geq 0.95$) (Reynolds and Snetsinger 2001, p. 142).

Extensive time has been spent by qualified observers in the historical range of the Kauai ʻoʻo searching for the small Kauai thrush, akekee, and akikiki. HFBSs were conducted in 1981, 1989, 1994, 2000, 2005, 2007, 2008, 2012, and 2018 (Paxton et al. 2016, entire; Paxton et al. 2020, entire). During the HFBSs in 2012 and 2018, occupancy surveys and nest searches did not yield any new detections of Kauai ʻoʻo. The KFBRP conducted mist-netting in various locations within the historical range for Kauai ʻoʻo from 2006 through 2009 and 2011 through 2018, and no Kauai ʻoʻo were caught or encountered (Crampton 2018, pers. comm.). The last credible sighting was in 1987.

Time Since Last Detection

Using 1987 as the last credible sighting of the Kauai ʻoʻo based on independent expert opinion, the estimated date for the species' extinction was 1991, with 95 percent confidence that the species was extinct by 2000 (Elphick et al. 2010, p. 620).

III. Analysis

The various bird species in the subfamily Drepanidinae (also known as the Hawaiian honeycreepers), which includes Kauai ʻoʻo, are highly susceptible to introduced avian disease, particularly avian malaria. At elevations below approximately 4,500 feet (1,372 meters) in Hawaii, the key factor driving disease epizootics of pox virus (*Avipoxvirus*) and avian malaria is the seasonal and altitudinal distribution and density of the primary vector of these diseases, the mosquito *Culex quinquefasciatus* (Atkinson and Lapointe 2009a, pp. 237–238, 245–246). Because they occur at similar altitudes and face similar threats, please refer to ''III. Analysis'' for the Kauai akialoa, above, for more information.

IV. Conclusion

At the time of listing in 1967, the Kauai ʻoʻo faced threats from effects of low population numbers, habitat loss, avian disease, and predation by introduced mammals. The best available information now indicates that the Kauai ʻoʻo is extinct. The species appears to have been vulnerable to introduced avian disease. In addition, the effects of small population size likely limited the species' genetic variation and adaptive capacity, thereby increasing the vulnerability of the species to environmental stressors including habitat loss and degradation. Since its last detection in 1987, qualified observers have conducted extensive surveys and searches and have not detected the species. Available information indicates that the species was not able to persist in the face of environmental stressors, and we conclude that the best available scientific and commercial information indicates that the species is extinct.

Large Kauai Thrush (Myadestes Myadestinus)

I. Background

Please refer to our proposed rule, published on September 30, 2021 (86 FR 54298), for a thorough review of the species background and legal history. Here, we will briefly summarize the species background. On October 13, 1970, we listed the large Kauai thrush (kamaʻo in the Hawaiian language) as endangered (35 FR 16047). This bird was included in the Kauai Forest Birds Recovery Plan (USFWS 1983, p. 1), as well as the Revised Recovery Plan for Hawaiian Forest Birds (USFWS 2006, p. viii). At the time of listing, the population size was estimated at 337 individuals (USFWS 1983, p. 3). Threats to the species included effects of low population numbers, habitat loss, avian disease, and predation by introduced mammals. The latest 5-year status review completed in 2019 recommended delisting due to extinction based on consideration of additional information about the biological status of the species, as discussed below (USFWS 2019, pp. 5, 10).

The large Kauai thrush was a medium-sized (7.9 inches, or 20 centimeters, total length) solitaire. Its plumage was gray-brown above, tinged with olive especially on the back, and light gray below with a whitish belly and undertail coverts. The large Kauai thrush lacked the white eye-ring and pinkish legs of the smaller puaiohi (small Kauai thrush) (USFWS 2006, p. 2–19). The last (unconfirmed) observation of the large Kauai thrush was made during the February 1989 Kauai Forest Bird Survey (Hawaii Department of Land and Natural Resources unpubl. data). However, the last credible sighting of the large Kauai thrush occurred in 1987.

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

The large Kauai thrush was often described for its habit of rising into the air, singing a few vigorous notes and then suddenly dropping down into the underbrush. The vocalizations of this species varied between sweet and melodic to lavish and flute-like, often given just before dawn and after dusk (USFWS 2006, p. 2–19). These behaviors indicate that detectability would be high in remaining suitable habitat if the large Kauai thrush still existed. No subsequent sightings or vocalizations have been documented despite extensive survey efforts by biologists and birders.

Survey Effort

Several recent surveys and searches, including the VCP and RBS, have been unsuccessful in detecting the large Kauai thrush despite intensive survey efforts by wildlife biologists from 1968 to 1973, and in 1981, 1989, 1993, 1994, 2000, 2005, and 2011 to 2018 (Hawaii Department of Land and Natural Resources unpubl. data; Scott et al. 1986, entire; Reynolds and Snetsinger 2001, entire; Crampton et al. 2017, entire; Crampton 2018, pers. comm.). During the RBS in 2001, coverage of the search area was extensive; therefore, they had a high probability of detecting the large Kauai thrush. None were detected, and it was concluded that the large Kauai thrush was likely extinct ($P \geq 0.95$) (Reynolds and Snetsinger 2001, p. 142).

Extensive time has been spent by qualified observers in the historical range of the large Kauai thrush searching for the small Kauai thrush, akekee, and akikiki. HFBSs were conducted in 1981, 1989, 1994, 2000, 2005, 2007, 2008, 2012, and 2018 (Paxton et al. 2016, entire; Paxton et al. 2020, entire). During the HFBS in 2012 and 2018, occupancy surveys and nest

searches did not yield any new detections of the large Kauai thrush. The KFBRP conducted mist-netting in various locations within the historical range for the large Kauai thrush from 2006 through 2009, and from 2011 through 2018, and no large Kauai thrush were caught or encountered (Crampton 2018, pers. comm.). The last credible sighting of the large Kauai thrush occurred in 1987.

Time Since Last Detection

Using 1987 as the last credible sighting of the large Kauai thrush based on independent expert opinion, the estimated date for the species' extinction was 1991, with 95 percent confidence that the species was extinct by 1999 (Elphick et al. 2010, p. 620).

III. Analysis

Several recent surveys and searches, including the RBS and HFBS, have been unsuccessful in detecting the large Kauai thrush despite intensive survey efforts by wildlife biologists in 1993, 1994, 2000, 2005, and 2011 to 2018 (Hawaii Department of Land and Natural Resources unpubl. data; Reynolds and Snetsinger 2001, entire; Crampton et al. 2017, entire; Crampton 2018, pers. comm.). Using 1987 as the last credible sighting based on independent expert opinion and the species' observational record, the estimated date for the species' extinction was 1991, with 95 percent confidence the species was extinct by 1999 (Elphick et al. 2010, p. 620). Another analysis determined that the large Kauai thrush was probably extinct at the time of the RBS in 1994 ($P \geq 0.95$) (Reynolds and Snetsinger 2001, p. 142).

IV. Conclusion

At the time of listing in 1970, the large Kauai thrush faced threats from low population numbers, habitat loss, avian disease, and predation by introduced mammals. The best available information now indicates that the large Kauai thrush is extinct. The species appears to have been vulnerable to the effects of small population size, which likely limited its genetic variation, disease resistance, and adaptive capacity, thereby increasing the vulnerability of the species to the environmental stressors of habitat degradation and predation by nonnative mammals. Since its last credible detection in 1987, qualified observers have conducted extensive surveys and searches throughout the range of the species but have not detected the species. Available information indicates that the species was not able to persist in the face of environmental stressors, and we conclude that the best available scientific and commercial information indicates that the species is extinct.

Maui Akepa (Loxops Coccineus Ochraceus)

I. Background

Please refer to our proposed rule, published on September 30, 2021 (86 FR 54298), for a thorough review of the species background and legal history. Here, we will briefly summarize the species background. On October 13, 1970, we listed the Maui akepa (originally listed as *Loxops ochraceus*) as endangered (35 FR 16047). This bird was included in the Maui-Molokai Forest Birds Recovery Plan (USFWS 1984, pp. 12–13), and the Revised Recovery Plan for Hawaiian Forest Birds (USFWS 2006, pp. 2–94, 2–134–2–137). At the time of listing, we considered Maui akepa to have very low population numbers, and to face threats from habitat loss, avian disease, and predation by introduced mammals. The latest 5-year status review completed in 2018 (initiated on February 12, 2016; see 81 FR 7571) recommended delisting due to extinction, based in part on continued lack of detections and consideration of extinction probability (USFWS 2018, pp. 5, 10).

The Maui akepa was known only from the island of Maui in the Hawaiian Islands. Maui akepa were found in small groups with young in the month of June when the birds were molting (Henshaw 1902, p. 62). The species appeared to also use the ohia tree for nesting, as a pair of Maui akepa was observed building a nest in the terminal foliage of a tall ohia tree (Perkins 1903, p. 420).

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

Maui akepa adult males varied from dull brownish orange to light brownish yellow, while females were duller and less yellowish (USFWS 2006, p. 2–134). Although the species was easily identifiable by sight, its small body size (less than 5 inches (13 centimeters) long) and habitat type (dense rainforest) made visual detection difficult. Songs and calls of Maui akepa could be confused with those of other Maui forest bird species; therefore, detection of the species requires visual confirmation of the individual producing the songs and calls (USFWS 2006, p. 2–135).

Survey Effort

In the absence of early historical surveys, the extent of the geographical range of the Maui akepa is unknown. Because the species occupied Maui Island, one might expect that it also inhabited Molokai and Lanai Islands like other forest birds in the Maui Nui group, but there are no fossil records of Maui akepa from either of these islands (USFWS 2006, p. 2–135). All historical records of the Maui akepa in the late 19th and early 20th centuries were from high-elevation forests most accessible to naturalists, near Olinda and Ukulele Camp on the northwest rift of Haleakala, and from mid-elevation forests in Kipahulu Valley (USFWS 2006, p. 2–134). This range suggests that the birds were missing from forests at lower elevations, perhaps due to the introduction of disease-transmitting mosquitoes to Lahaina in 1826 (USFWS 2006, p. 2–135). From 1970 to 1995, there were few credible sightings of Maui akepa (USFWS 2006, p. 2–136).

The population of Maui akepa was estimated at 230 individuals, with a 95 percent confidence interval of plus or minus 290 individuals (Scott et al. 1986, pp. 37, 154) during VCP surveys in 1980. In other words, the estimate projects a maximum population of 520 individuals and a minimum population of 0. However, confidence intervals were large, and this estimate was based on potentially confusing auditory detections, and not on visual observation (USFWS 2006, p. 2–136). On Maui, given the density of VCP survey stations, it is estimated that 5,865 point counts would be needed to determine with 95 percent confidence the absence of Maui akepa on Maui (Scott et al. 2008, p. 7). In 2008, only 84 VCP counts had been conducted on Maui in areas where this species was known to have occurred historically. Although the results of the 1980 VCP surveys find Maui akepa extant at that time, tremendous effort is required using the VCP method to confirm this species' extinction (Scott et al. 2008, pp. 6–8). For Maui akepa, nearly 70 times more VCP counts than conducted up to 2008 would be needed to confirm the species' extinction with 95 percent confidence.

Songs identified as Maui akepa were heard on October 25, 1994, during the RBS in Hanawi NAR and on November 28, 1995, from Kipahulu Valley at 6,142 feet (1,872 meters) elevation, but the species was not confirmed visually. Auditory detections of Maui akepa require visual confirmation because of possible confusion or mimicry with similar songs of Maui parrotbill (Reynolds and Snetsinger 2001, p. 140).

Qualified observers spent extensive time searching for Maui akepa, po'ouli (*Melamprosops phaeosoma*), and Maui nukupuu in the 1990s. Between September 1995 and October 1996,

1,730 acres (700 hectares) in Hanawi NAR were searched during 318 person-days (Baker 2001, p. 147), including the area with the most recent confirmed sightings of Maui akepa. During favorable weather conditions (good visibility and no wind or rain), teams would stop when ''chewee'' calls given by Maui parrotbill, or when po'ouli and Maui nukupuu were heard, and would play either Maui parrotbill or akiapolaau calls and songs to attract the bird for identification. Six po'ouli were found, but no Maui akepa were detected (Baker 2001, p. 147). The MFBRP conducted searches from 1997 through 1999 from Hanawi NAR to Koolau Gap (west of Hanawi NAR), for a total of 355 hours at three sites with no detections of Maui akepa (Vetter 2018, pers. comm.). The MFBRP also searched Kipahulu Valley on northern Haleakala from 1997 to 1999, for a total of 320 hours with no detections of Maui akepa. However, the Kipahulu searches were hampered by bad weather, and playback was not used (Vetter 2018, pers. comm.). Despite over 10,000 person-hours of searches in the Hanawi NAR and nearby areas from October 1995 through June 1999, searches failed to confirm earlier detections of Maui akepa (Pratt and Pyle 2000, p. 37). While working on Maui parrotbill recovery from 2006 to 2011, the MFBRP spent extensive time in the area of the last Maui akepa sighting. The most recent survey in 2017 across much of east and west Maui did not find Maui akepa (Judge et al. 2019, entire). The MFBRP project coordinator concluded that if Maui akepa were present, they would have been detected (Mounce 2018, pers. comm.).

Time Since Last Detection

The last confirmed sighting (as defined for the RBS) of the Maui akepa was in 1988 (Engilis 1990, p. 69). Surveys conducted during the late 1980s to the 2000s failed to locate the species (Pratt and Pyle 2000, p. 37; Baker 2001, p. 147). Using 1980 as the last documented observation record for Maui akepa (the 1988 sighting did not meet the author's criteria for a ''documented'' sighting), 1987 was estimated to be the year of extinction of Maui akepa, with 2004 as the upper 95 percent confidence bound on that estimate (Elphick et al. 2010, p. 620).

III. Analysis

Reasons for decline presumably are similar to threats faced by other endangered forest birds on Maui, including small populations, habitat degradation by feral ungulates and introduced invasive plants, and predation by introduced mammalian predators, including rats, cats (*Felis catus*), and mongoose (*Herpestes auropunctatus*) (USFWS 2006, p. 2–136). Rats may have played an especially important role as nest predators of Maui akepa. While the only nest of Maui akepa ever reported was built in tree foliage, the birds may also have selected tree cavities as does the very similar Hawaii akepa (*L. c. coccineus*). In Maui forests, nest trees are of shorter stature than where akepa survive on Hawaii Island. Suitable cavity sites on Maui are low in the vegetation, some near or at ground level, and thus are more accessible to rats. High densities of both black and Polynesian rats (*R. rattus* and *R. exulans*) are present in akepa habitat on Maui (USFWS 2006, p. 2–136).

The population of Maui akepa was estimated at 230 birds in 1980 (Scott et al. 1986, p. 154); however, confidence intervals on this estimate were large. In addition, this may have been an overestimate because it was based on audio detections that can be confused with similar songs of Maui parrotbill. The last confirmed sighting of Maui akepa was in 1988, from Hanawi NAR (Engilis 1990, p. 69). Over 10,000 search hours in Hanawi NAR and nearby areas including Kipahulu Valley from October 1995 through June 1999 failed to confirm presence of Maui akepa (Pratt and Pyle 2000, p. 37). Field presence by qualified observers from 2006 to 2011 in the area Maui akepa was last known failed to detect this species, and the MFBRP project coordinator concluded that if Maui akepa were present they would have been detected (Mounce 2018, pers. comm.). Further, using the method to determine probability of species extinction based on time (years) since the species was last observed (using 1980 as the last documented observation record, as described above), the estimated year the Maui akepa became extinct is 1987, with 2004 as the upper 95 percent confidence bound on that estimate (Elphick et al. 2010, p. 620).

IV. Conclusion

At the time of listing in 1970, we considered the Maui akepa to be facing threats from habitat loss, avian disease, and predation by introduced mammals. The best available information now indicates that the Maui akepa is extinct. The species appears to have been vulnerable to the effects of small population size, which likely limited its genetic variation, disease resistance, and adaptive capacity, thereby increasing the vulnerability of the species to the environmental stressors of habitat degradation and predation by nonnative mammals. Since the last detection in 1988, qualified observers have conducted extensive surveys in that same area with no additional detections of the species. Available information indicates that the species was not able to persist in the face of environmental stressors, and we conclude that best available scientific and commercial information indicates that the species is extinct.

Maui Nukupuu (Hemignathus Lucidus Affinis)

I. Background

Please refer to our proposed rule, published on September 30, 2021 (86 FR 54298), for a thorough review of the species background and legal history. Here, we will briefly summarize the species background. On October 13, 1970, we listed the Maui nukupuu (originally listed as *Hemignathus affinis*) as endangered (35 FR 16047). This bird was included in the Maui-Molokai Forest Birds Recovery Plan (USFWS 1984, pp. 8, 10–12), and the Revised Recovery Plan for Hawaiian Forest Birds (USFWS 2006, pp. 2–92–2–96). At the time of listing, we considered Maui nukupuu to have very low population numbers and to be threatened by habitat loss, avian disease, and predation by introduced mammals. The 5-year status review completed in 2018 (initiated on February 12, 2016; see 81 FR 7571) recommended delisting due to extinction (USFWS 2018, p. 11).

The Maui nukupuu was known only from the island of Maui in the Hawaiian Islands. The historical record provides little information on the life history of the Maui nukupuu (Rothschild 1893 to 1900, pp. 103–104; Perkins 1903, pp. 426–430). Nothing is known of its breeding biology, which likely was similar to its closest relative, the akiapolaau on Hawaii Island. Maui nukupuu often joined mixed-species foraging flocks (Perkins 1903, p. 429).

II. Information on Detectability, Survey Effort, and Time Since Last Detection Species Detectability

The Maui nukupuu was a medium-sized (approximately 0.78 ounce, or 23 gram) Hawaiian honeycreeper with an extraordinarily thin, curved bill that was slightly longer than the bird's head. The lower mandible was half the length of the upper mandible and followed its curvature rather than being straight (as in the related akiapolaau) (USFWS 2006, p. 2–92). Adult males were olive green with a yellow head, throat, and breast, whereas adult females and juveniles had an olive-green head and

yellow or yellowish gray under-parts. The species' coloration and bill shape were quite distinctive, making visual identification of Maui nukupuu relatively easy. The Maui nukupuu's song resembled the warble of a house finch (*Haemorhous mexicanus*) but was lower in pitch. Both the song and the ''kee-wit'' call resembled those of Maui parrotbill, and audio detection required visual confirmation (USFWS 2006, p. 2–92).

Survey Effort

Historically, the Maui nukupuu was known only from Maui, but subfossil bones of a probable Maui nukupuu from Molokai show that the species likely formerly inhabited that island (USFWS 2006, p. 2–92). All records from late 19th and early 20th centuries were from locations most accessible to naturalists, above Olinda on the northwest rift of Haleakala, and from mid-elevation forests in Kipahulu Valley (USFWS 2006, pp. 2–134). Observers at the time noted the restricted distribution and low population density of Maui nukupuu. As on Kauai, introduced mosquitoes and avian diseases may have already limited these birds to forests at higher elevations, and we can presume that the Maui nukupuu once had a much wider geographic range (USFWS 2006, pp. 2–92). In 1967, Maui nukupuu were rediscovered in the upper reaches of Kipahulu Valley on the eastern slope of Haleakala, east Maui (Banko 1968, pp. 65–66; USFWS 2006, pp. 2–95). Since then, isolated sightings have been reported on the northern and eastern slopes of Haleakala, but these reports are uncorroborated by behavioral information or follow-up sightings (USFWS 2006, pp. 2–95).

Based on a single sighting of an immature bird during VCP surveys in 1980, the population of Maui nukupuu was estimated to be 28 individuals, with a 95 percent confidence interval of plus or minus 56 individuals (Scott et al. 1986, pp. 37, 131). On Maui, given the density of VCP survey stations, it was estimated that 1,357 point counts would be needed to determine with 95 percent confidence the absence of Maui nukupuu on Maui (Scott et al. 2008, p. 7). In 2008, only 35 VCP counts had been conducted on Maui in areas where Maui nukupuu could still potentially exist. Although the results of VCP surveys in 1980 find Maui nukupuu extant at that time, a tremendous effort is required to confirm this species' extinction using VCP method (Scott et al. 2008, pp. 6–8). For Maui nukupuu, nearly 39 times more VCP counts than conducted up to 2008 would be needed to confirm this species' extinction with 95 percent confidence. The RBS reported an adult male Maui nukupuu with bright yellow plumage at 6,021 feet (1,890 meters) elevation in 1996 from Hanawi NAR (Reynolds and Snetsinger 2001, p. 140). Surveys and searches have been unsuccessful in finding Maui nukupuu since the last confirmed sighting by RBS. Based on these results, the last reliable record of Maui nukupuu was from Hanawi NAR in 1996 (24 years ago).

Qualified observers spent extensive time searching for Maui nukupuu, poʻouli, and Maui akepa in the 1990s. Between September 1995 and October 1996, 1,730 acres (700 hectares) of Hanawi NAR were searched during 318 person-days (Baker 2001, p. 147). Please refer to ''Survey Effort'' for the Maui akepa, above, for the method used in this survey. The MFBRP conducted searches from 1997 to 1999, from Hanawi NAR to Koolau Gap (west of the last sighting of Maui nukupuu) for a total of 355 hours of searches at three sites with no detections of Maui nukupuu (Vetter 2018, pers. comm.). The MFBRP also searched Kipahulu Valley on northern Haleakala from 1997 to 1999, for a total of 320 hours, with no detections of Maui nukupuu. The Kipahulu searches were hampered, however, by bad weather, and playback was not used (Vetter 2018, pers. comm.). Despite over 10,000 person-hours of searching in the Hanawi NAR and nearby areas from October 1995 through June 1999, searches failed to confirm the 1996 detection of Maui nukupuu, or produce other sightings (Pratt and Pyle 2000, p. 37). While working on Maui parrotbill recovery from 2006 to 2011, the MFBRP spent extensive time in the area of the last Maui nukupuu sighting. The most recent survey in 2017 across much of east and west Maui did not find Maui nukupuu (Judge et al. 2019, entire). The MFBRP project coordinator concluded that if Maui nukupuu were still present they would have been detected (Mounce 2018, pers. comm.).

Time Since Last Detection

The Maui nukupuu was last sighted in the Hanawi NAR in 1996 (Reynolds and Snetsinger 2001, p. 140). Surveys conducted during the late 1990s and early 2000s were unable to locate the species (Pratt and Pyle 2000, p. 37; Baker 2001, p. 147).

Elphick et al. 2010 (p. 630) attempted to apply their method to predict the probability of species extinction for the Maui nukupuu based on time (years) since the species was last observed (see ''Time Since Last Detection'' for Kauai akialoa, above). However, observations in 1967, 1980, and 1996 were not considered for this analysis because they did not meet the researchers' criteria for a confirmed sighting. Therefore, using 1896 as the last observation of Maui nukupuu, under their stringent criteria, the authors were unable to determine an estimated date for species extinction.

III. Analysis

The Maui nukupuu is also affected by small population sizes and other threats, as discussed above under ''III. Analysis'' for the Maui akepa. The population of Maui nukupuu was estimated to be 28 birds in 1980 (Scott et al. 1986, pp. 37, 131); however, confidence intervals on this estimate were large. This population was vulnerable to negative effects of small population size, including stochastic effects and genetic drift that can accelerate the decline of small populations. However, even rare species can persist despite having low numbers. The last confirmed sighting of Maui nukupuu was in 1996, from Hanawi NAR (Reynolds and Snetsinger 2001, p. 140). Over 10,000 person-search hours in Hanawi NAR and nearby areas, including Kipahulu Valley, from October 1995 through June 1999 failed to confirm this sighting or to detect other individuals (Pratt and Pyle 2000, p. 37). While working on Maui parrotbill recovery from 2006 to 2011, the MFBRP spent extensive time in the area of the last Maui nukupuu sighting; however, no Maui nukupuu were observed, and the MFBRP project coordinator concluded that if Maui nukupuu were still present they would have been detected (Mounce 2018, pers. comm.).

IV. Conclusion

At the time of listing in 1970, Maui nukupuu had very low population numbers and faced threats from habitat loss, avian disease, and predation by introduced mammals. The species appears to have been vulnerable to avian disease and the effects of small population size. The latter likely limited the species' genetic variation and adaptive capacity, thereby increasing the vulnerability of the species to the environmental stressors of habitat degradation and predation by nonnative mammals. Since its last detection in 1996, qualified observers have conducted extensive searches in the area where the species was last sighted and other native forest habitat where the species occurred historically, but they have not detected the species. Available information indicates that the species was not able to persist in the face of environmental stressors, and we conclude that the best available

scientific and commercial data indicate that the species is extinct.

Molokai Creeper (Paroreomyza Flammea)

I. Background

Please refer to our proposed rule, published on September 30, 2021 (86 FR 54298), for a thorough review of the species background and legal history. Here, we will briefly summarize the species background. On October 13, 1970, we listed the Molokai creeper (kākāwahie in the Hawaiian language) as endangered (35 FR 16047). This bird was included in the Maui-Molokai Forest Birds Recovery Plan (USFWS 1984, pp. 18–20) and the Revised Recovery Plan for Hawaiian Forest Birds (USFWS 2006, pp. 2–121–2–123). At the time of listing, the Molokai creeper was considered extremely rare and faced threats from habitat loss, avian disease, and predation by introduced mammals. The latest 5-year status review completed in 2018 (initiated on February 12, 2016; see 81 FR 7571) recommended delisting due to extinction based in part on continued lack of detections and consideration of extinction probability (USFWS 2018, p. 9).

The Molokai creeper was known only from Molokai in the Hawaiian Islands. Only fragmentary information is available about the life history of the species from the writings of early naturalists (Perkins 1903, pp. 413–417; Pekelo 1963, p. 64; USFWS 2006, p. 2–122). This species was an insectivore that gleaned vegetation and bark in wet ohia forests and was known almost solely from boggy areas of Molokai (Pekelo 1963, p. 64.

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

Adult males were mostly scarlet in various shades, while adult females were brown with scarlet washes and markings, and juvenile males ranged from brown to scarlet with many gradations. The bill was short and straight. Its calls were described as chip or chirping notes similar to other creeper calls (USFWS 2006, p. 2–122). Its closest relatives are the Maui creeper (*Paroreomyza montana*) and the Oahu creeper (*P. maculata*). The species' coloration and bill shape were distinctive, and Molokai creeper was identified visually with confidence.

Survey Effort

Molokai creeper was common in 1907, but by the 1930s they were considered in danger of extinction (Scott et al. 1986, p. 148). The species was last detected in 1963, on the west rim of Pelekunu Valley (Pekelo 1963, p. 64). Surveys and searches have been unsuccessful in finding the Molokai creeper since the last sighting, including VCP surveys on the Olokui Plateau in 1980 and 1988, and the RBS of the Kamakou-Pelekunu Plateau in 1995 (Reynolds and Snetsinger 2001, p. 141). Following up on a purported sighting in 2005 of a Molokai thrush (*Myadestes lanaiensis rutha*), a survey was conducted over 2 to 3 days in Puu Alii NAR, the last place the Molokai creeper was sighted in the 1960s (Pekelo 1963, p. 64; USFWS 2006, pp. 2–29). Using playback recordings for Molokai thrush, searchers covered the reserve area fairly well, but no Molokai creepers or Molokai thrush were detected (Vetter 2018, pers. comm.).

No Molokai creepers were detected during VCP surveys beginning in the late 1970s to the most recent Hawaiian forest bird survey on Molokai in 2010 (Scott et al. 1986, p. 37; Camp 2015, pers. comm.). On Molokai, given the density of VCP survey stations, it was estimated that 215,427 point counts would be needed to determine with 95 percent confidence the absence of Molokai creeper on Maui (Scott et al. 2008, p. 7). In 2008, only 131 VCP counts had been conducted on Molokai in areas where Molokai creeper could still potentially exist. For the Molokai creeper, nearly 1,650 times more VCP counts than conducted up to 2008 would be needed to confirm the species' extinction with 95 percent confidence. Based on species detection probability, the RBS determined the likelihood of the Molokai creeper being extirpated from the Kamakou-Pelekunu plateau was greater than 95 percent. Additional VCP surveys were conducted on Molokai in 2010 and 2021, but no Molokai creepers were detected (Camp 2015, pers. comm., p. 2; Berry 2021, pers. comm., p. 1). The RBS estimated the Molokai creeper to be extinct over the entirety of its range, but because not all potential suitable habitat was searched, extinction probability was not determined (Reynolds and Snetsinger 2001, p. 141).

Time Since Last Detection

The last reliable record (based on independent expert opinion and physical evidence) of Molokai creeper was from Pelekunu Valley in 1963 (Pekelo 1963, p. 64). Using 1963 as the last reliable observation record for Molokai creeper, 1969 is estimated to be year of extinction of the Molokai creeper with 1985 as the upper 95 percent confidence bound (Elphick et al. 2010, p. 620).

III. Analysis

The Molokai creeper faced similar threats to the other Maui bird species (see ''III. Analysis'' for the Maui akepa, above). The last confirmed detection of the Molokai creeper was in 1963 (Pekelo 1963, p. 64). Forest bird surveys in 1980, 1988, and 2010, and the RBS in 1994–1996 (although not including the Olokui Plateau), failed to detect this species. A 2- to 3-day search by qualified personnel for the Molokai thrush in Puu Alii NAR in 2005, the last location where Molokai creeper was sighted, also failed to detect the Molokai creeper. The estimated year of extinction is 1969, with 1985 as the 95 percent confidence upper bound (Elphick et al. 2010, p. 620). It is highly likely that avian disease, thought to be the driver of range contraction and disappearance of many Hawaiian honeycreeper species, was present periodically throughout nearly all of the Molokai creeper's range over the last half-century.

IV. Conclusion

At the time of listing in 1970, the Molokai creeper was considered to be facing threats from habitat loss, avian disease, and predation by introduced mammals. The best information now indicates that the Molokai creeper is extinct. The species appears to have been vulnerable to avian disease, as well as the effects of small population size. The latter likely limited the species' genetic variation and adaptive capacity, thereby increasing the vulnerability of the species to the environmental stressors of habitat degradation and predation by nonnative mammals. Since its last detection in 1963, qualified observers have conducted extensive searches for the Molokai creeper but have not detected the species. Available information indicates that the species was not able to persist in the face of environmental stressors, and we conclude that the best available scientific and commercial information indicates that the species is extinct.

Po'ouli (Melamprosops Phaeosoma)

I. Background

Please refer to our proposed rule, published on September 30, 2021 (86 FR 54298), for a thorough review of the species background and legal history. Here, we will briefly summarize the species background. On September 25, 1975, we listed the po'ouli (*Melamprosops phaeosoma*) as endangered (40 FR 44149), and the species was included in the Maui-

Molokai Forest Birds Recovery Plan (USFWS 1984, pp. 16–17) and the Revised Recovery Plan for Hawaiian Forest Birds (USFWS 2006, pp. 2–144–2–154). At the time of listing, we considered the po'ouli to have very low abundance and likely to be threatened by habitat loss, avian disease, and predation by introduced mammals. The latest 5-year status review completed in 2018 (initiated on February 12, 2016; see 81 FR 7571) recommended delisting due to extinction, based in part on continued lack of detections and consideration of extinction probability (USFWS 2018, pp. 4–5, 10).

The po'ouli was known only from the island of Maui in the Hawaiian Islands and was first discovered in 1973, in high-elevation rainforest on the east slope of Haleakala (USFWS 2006, p. 2–146). Fossil evidence shows that the po'ouli once inhabited drier forests at lower elevation on the leeward slope of Haleakala, indicating it once had a much broader geographic and habitat range (USFWS 2006, p. 2–147). Po'ouli were observed singly, in pairs, and in family groups consisting of both parents and a single offspring (Pratt et al. 1997, p. 1). Po'ouli foraged primarily on tree branches, making extensive use of the subcanopy and understory. They seemed to have preferred the native hydrangea (kanawao [*Broussaisia arguta*]), the native holly (kawau [*Ilex anomala*]), and ohia (Pratt et al. 1997, p. 4). Po'ouli were unusually quiet. Males rarely sang and did so mostly as part of courtship prior to egg-laying. The maximum lifespan of this species is estimated to be 9 years (The Animal Aging and Longevity Database 2020, unpaginated).

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

The po'ouli was a medium-sized, 0.9 ounce (26 gram), stocky Hawaiian honeycreeper, easily recognized by its brown plumage and characteristic black mask framed by a gray crown and white cheek patch. However, po'ouli were unusually quiet. Although distinctive visually, because the species rarely vocalized, it was difficult to survey by audio detections.

Survey Effort

The po'ouli was first discovered in 1973 (USFWS 2006, p. 2–146). Total population was estimated at 140 individuals, with a 95 percent confidence interval of plus or minus 280 individuals, during VCP surveys in 1980 (Scott et al. 1986, pp. 37, 183), but estimates of population size and density were likely inaccurate and considered imprecise due to the species' low density and cryptic behavior (USFWS 2006, p. 2–147). In 1994, after nearly 2 years without a sighting, the continued existence and successful breeding of five to six po'ouli in the Kuhiwa drainage of Hanawi NAR was confirmed (Reynolds and Snetsinger 2001, p. 141). Thorough surveys of the historical range between 1997 and 2000, the MFBRP located only three birds, all in separate territories in Hanawi NAR. These three po'ouli were color-banded in 1996 and 1997, and subsequently observed (see below), but no other individuals have been observed since then (Baker 2001, p. 144; USFWS 2006, pp. 2–147–2–148). The MFBRP searched Kipahulu Valley on northern Haleakala from 1997 to 2000, for a total of 320 hours, but failed to detect po'ouli. These searches were hampered by bad weather, however, and playback was not used (Vetter 2018, pers. comm.). The most recent survey in 2017 across much of east and west Maui did not find po'ouli (Judge et al. 2019, entire).

Time Since Last Detection

In 2002, what was thought to be the only female po'ouli of the three in Hanawi NAR was captured and released into one of the male's territories, but she returned to her home range the following day (USFWS 2006, p. 2–151). In 2004, an effort was initiated to capture the three remaining po'ouli to breed them in captivity. One individual was captured and successfully maintained in captivity for 78 days, but died on November 26, 2004, before a potential mate could be obtained. The remaining two birds were last seen in December 2003 and January 2004 (USFWS 2006, pp. 2–153–2–154). While working on Maui parrotbill recovery from 2006 to 2011, the MFBRP spent extensive time in the area of the last po'ouli sightings. No po'ouli were seen or heard. The MFBRP project coordinator concluded that if po'ouli were present, they would have been detected (Mounce 2018, pers. comm.).

Using 2004 as the last reliable observation record for po'ouli, 2005 is estimated to be the year of extinction, with 2008 as the upper 95 percent confidence bound on that estimate (Elphick et al. 2010, p. 620).

III. Analysis

The po'ouli faced threats similar to other bird species occurring on Maui (see ''III. Analysis'' for the Maui akepa, above). The last confirmed sighting of po'ouli was in 2004 from Hanawi NAR (USFWS 2006, p. 2–154). Extensive field presence by qualified individuals from 2006 to 2011 in Hanawi NAR, where po'ouli was last observed, failed to detect this species, as did searches of Kipahulu Valley near Hanawi NAR from 1997 to 1999 (USFWS 2006, p. 2–94). Using 2004 as the last reliable observation record for po'ouli, the estimated year the species went extinct is 2005, with 2008 the upper 95 percent confidence bound on that estimate (Elphick et al. 2010, p. 620).

IV. Conclusion

At the time of its listing in 1975, we considered po'ouli to have very low population abundance, and to face threats from habitat loss, avian disease, and predation by introduced mammals. The best available information now indicates that the po'ouli is extinct. Although the po'ouli was last detected as recently as early 2004, the species appears to have been vulnerable to the effects of small population size since it was first discovered in 1973. The small population size likely limited its genetic variation, disease resistance, and adaptive capacity over time, thereby increasing the vulnerability of the species to the environmental stressors of habitat degradation and predation by nonnative mammals. Experienced staff with MFBRP conducted extensive recovery work in po'ouli habitat between 2006 and 2011, and had no detections of the species. Available information indicates that the species was not able to persist in the face of environmental stressors, and we conclude that the species is extinct.

Fishes

San Marcos Gambusia (Gambusia Georgei)

I. Background

Please refer to our proposed rule, published on September 30, 2021 (86 FR 54298), for a thorough review of the species background and legal history. Here, we will briefly summarize the species background. On July 14, 1980, we listed the San Marcos gambusia, a small fish, as endangered (45 FR 47355). We concurrently designated approximately 0.5 miles of the San Marcos River as critical habitat for the species (45 FR 47355, July 14, 1980, p. 47364). The San Marcos gambusia was endemic to the San Marcos River in San Marcos, Texas. The San Marcos gambusia has historically only been found in a section of the upper San Marcos River approximately from Rio Vista Dam to a point near the U.S. Geological Survey gaging station immediately downstream from Thompson's Island. Only a limited number of species of *Gambusia* are

native to the United States; of this subset, the San Marcos gambusia had one of the most restricted ranges.

We listed the species as endangered due to decline in population size, low population numbers, and possibility of lowered water tables, pollution, bottom plowing (a farming method that brings subsoil to the top and buries the previous top layer), and cutting of vegetation (43 FR 30316; July 14, 1978). We identified groundwater depletion, reduced spring flows, contamination, habitat impacts resulting from severe drought conditions, and cumulative effects of human activities as threats to the species (43 FR 30316; July 14, 1978). At the time of listing, this species was extremely rare.

There has also been evidence of hybridization between *G. georgei* and *G. affinis* (western mosquitofish) in the wild. Hybridization between *G. georgei* and *G. affinis* continued for many years without documented transfer of genes between the species that would have resulted in the establishment of a new species (Hubbs and Peden 1969, p. 357). Based on collections in the 1920s, a study in the late 1960s surmised that limited hybridization with *G. affinis* did not seem to have reduced the specific integrity of either species. However, as fewer *G. georgei* individuals existed in the wild and therefore encountered each other, the chances of hybridization with the much more common *G. affinis* increased.

On May 31, 2018, we initiated a 5-year review of the species (83 FR 25034). The review relied on available information, including survey results, fish collection records, peer-reviewed literature, various agency records, and correspondences with leading *Gambusia* species experts in Texas. That 5-year review recommended delisting the San Marcos gambusia due to extinction.

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

Historically, the San Marcos gambusia had small populations, and the pattern of abundance strongly suggests a decrease beginning prior to the mid-1970s. Historical records indicate that San Marcos gambusia was likely collected from the headwaters of the San Marcos River (Hubbs and Peden 1969, p. 28). The highest number of San Marcos gambusia ever collected was 119 in 1968. Because this species preferred sections of slow-moving waters and had a limited historical range of a small section of the San Marcos River, potential detection was not expected to be difficult.

Survey Effort

In 1976, we contracted a status survey to improve our understanding of the species and its habitat needs. We facilitated bringing individuals into captivity for breeding and study. Many researchers have been involved and have devoted considerable effort to attempts to locate and preserve populations. Intensive collections during 1978 and 1979 yielded only 18 San Marcos gambusia from 20,199 *Gambusia* total, which means San Marcos gambusia amounted to only 0.09 percent of those collections (Edwards et al. 1980, p. 20). Captive populations were established at the University of Texas at Austin in 1979, and fish from that captive population were used to establish a captive population at our Dexter National Fish Hatchery in 1980. Both captive populations later became contaminated with another *Gambusia* species. The fish hybridized, and the pure stocks were lost.

Following the failed attempt at maintaining captive populations at Dexter National Fish Hatchery and the subsequent listing of the species in 1980, we contracted for research to examine known localities and collect fish to establish captive refugia. Collections made in 1981 and 1982 within the range of San Marcos gambusia indicated a slight decrease in relative abundance of this species (0.06 percent of all *Gambusia*). From 1981 to 1984, efforts were made to relocate populations and reestablish a culture of individuals for captive refugia. Too few pure San Marcos gambusia and hybrids were found to establish a culture, although attempts were made with the few fish available (Edwards et al. 1980, p. 24). In the mid-1980s, staff from the San Marcos National Fish Hatchery and Technology Center also searched unsuccessfully for the species in attempts to locate individuals to bring into captivity.

Intensive searches for San Marcos gambusia were conducted in May, July, and September of 1990, but were unsuccessful in locating any pure San Marcos gambusia. The searches consisted of more than 180 people-hours of effort over the course of 3 separate days and covered the area from the headwaters at Spring Lake to the San Marcos wastewater treatment plant outfall. Over 15,450 *Gambusia* were identified during the searches. One individual collected during the search was visually identified as a possible backcross of *G. georgei* and *G. affinis* (Service 1990 permit report). This individual was an immature fish with plain coloration. Additional sampling near the Interstate Highway 35 type locality has occurred at approximately yearly intervals since 1990, and no San Marcos gambusia have been found. No San Marcos gambusia were found in the 32,811 *Gambusia* collected in the upper San Marcos River by the Service from 1994 to 1996 (Edwards 1999, pp. 6–13).

Time Since Last Detection

Academic researchers, Texas Parks and Wildlife Department scientists, and the Service have continued to search for the San Marcos gambusia during all collection and research with fishes on the San Marcos River. San Marcos gambusia have not been found in the wild since 1983, even with intensive searches, including the ones conducted in May, July, and September of 1990, covering the species' known range and designated critical habitat. Since 1996, all attempts to locate and collect San Marcos gambusia have failed (Edwards 1999, p. 3; Edwards et al. 2002, p. 358; Hendrickson and Cohen 2015, unpaginated; Bio-West 2016, p. 43; Bonner 2018, pers. comm.). More recent surveys and analyses of fish species already consider the San Marcos gambusia extinct (Edwards et al. 2002, p. 358; Hubbs et al. 2008, p. 3). Additionally, hybridized individuals have not been documented since 1990.

III. Analysis

Although the population of San Marcos gambusia was historically small, it also had one of the most restricted ranges of *Gambusia* species. San Marcos gambusia have not been found in the wild since 1983, even with intensive searches, including the ones conducted in May, July, and September of 1990, covering the species' known range and designated critical habitat. Additionally, no detections of hybridized San Marcos gambusia with *G. affinis* is further evidence that extinction has occurred.

In addition to the San Marcos gambusia not being found in the wild, all attempts at captive breeding have failed. This is largely due to unsuccessful searches for the species in attempts to locate individuals to bring into captivity.

Due to the narrow habitat preference and limited range of the San Marcos gambusia, and the exhaustive survey and collection efforts that have failed to detect the species, we conclude there is a very low possibility of an individual or population remaining extant but undetected. Therefore, the decrease in San Marcos gambusia abundance, and the lack of hybridized individuals in

any recent samples, indicates that the species is extinct.

IV. Conclusion

The San Marcos gambusia was federally listed as endangered in 1980. At the time of listing, this species was rare. The last known collections of San Marcos gambusia from the wild were in the early 1980s (Edwards 1999, p. 2; Edwards 2002, p. 358), and the last known sighting in the wild occurred in 1983. In 1985, after unsuccessful breeding attempts with *G. affinis* from the upper San Marcos River, the last captive female San Marcos gambusia died. All available information and field survey data support a determination that the San Marcos gambusia has been extinct in the wild for more than 35 years. We have reviewed the best scientific and commercial data available to conclude that the species is extinct.

Scioto Madtom (Noturus Trautmani)

I. Background

Please refer to our proposed rule, published on September 30, 2021 (86 FR 54298), for a thorough review of the species background and legal history. Here, we will briefly summarize the species background. On September 25, 1975, we listed the Scioto madtom (*Noturus trautmani*) as endangered (40 FR 44149), due to the pollution and siltation of its habitat and the proposal to construct two impoundments within its range. Two 5-year reviews were initiated in 2009 (74 FR 11600; March 18, 2009) and 2014 (79 FR 38560; July 8, 2014). The recommendations from both the 2009 and 2014 reviews were to delist the species due to extinction (Service 2009, p. 7; Service 2014, p. 6).

The Scioto madtom was a small, nocturnal species of catfish in the family Ictaluridae. The Scioto madtom has been found only in a small section of Big Darby Creek, a major tributary to the Scioto River, and was believed to be endemic to the Scioto River basin in central Ohio (40 FR 44149, September 25, 1975; Service 1985, p. 10; Service 1988, p. 1).

The species was first collected in 1943 (Trautman 1981, p. 504), and was first described as a species in 1969 (Taylor 1969, pp. 156–160). Only 18 individuals of the Scioto madtom were ever collected. All were found along one stretch of Big Darby Creek, and all but one were found within the same riffle known as Trautman's riffle. The riffle habitat was comprised of glacial cobble, gravel, sand, and silt substrate, with some large boulders (Trautman 1981, p. 505) with moderate current and high-quality water free of suspended sediments.

The exact cause of the Scioto madtom's decline is unknown, but was likely due to modification of its habitat from siltation, suspended industrial effluents, and agricultural runoff (40 FR 44149, September 25, 1975; Service 1988, p. 2). At the time of listing, two dams were proposed for Big Darby Creek, although ultimately they were never constructed. It should also be noted that the northern madtom (*N. stigmosus*) was first observed in Big Darby Creek in 1957, the same year the last Scioto madtom was collected (Service 1982, p. 3; Kibbey 2009, pers. comm.). Given the apparent small population size and highly restricted range of the Scioto madtom in the 1940s and 1950s, it is possible that the species was unable to successfully compete with the northern madtom for the same food and shelter resources (Kibbey 2009, pers. comm.).

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

The Scioto madtom looked similar to other madtom species but could be distinguished by characteristics such as the number of pectoral and anal rays (Taylor 1969, p. 156). The species, like other madtom species, was relatively cryptic as they hid during the daylight hours under rocks or in vegetation and emerged after dark to forage along the bottom of the stream (Tetzloff 2003, p. 1). Despite these detection challenges, many surveys by experienced biologists have been undertaken to try to locate extant populations of Scioto madtom (USFWS 1977, entire; USFWS 1982, entire; USFWS 1985, entire; USFWS 1997, entire; Kibbey 2009, pers. comm.).

Survey Effort

No Scioto madtoms have been observed since 1957, despite intensive fish surveys throughout Big Darby Creek in 1976–1977 (Service 1977, p. 15), 1981–1985 (Service 1982, p. 1; Service 1985, p. 1), 2014–2015 (Ohio Environmental Protection Agency (OEPA) 2018, p. 48), and 2001–2019 (Kibbey 2009, pers. comm.; Zimmerman 2014, 2020, pers. comm.).

The fish surveys conducted in Big Darby Creek in 1976–1977 and 1981–1985 specifically targeted the Scioto madtom. The 1976–1977 survey found 41 madtoms of 3 species and 34 species of fish in riffles at and near the Scioto madtom type locality (Service 1977, pp. 13–15). The 1981–1985 survey occurred throughout Big Darby Creek and found a total of 2,417 madtoms of 5 species (Service 1985, pp. 1, 5, 19–23). Twenty-two percent (542 individuals) of the total madtoms were riffle madtoms of the subgenus Rabida, which also includes the Scioto madtom (Service 1985, p. 1). None of the species identified were the Scioto madtom.

The 2014–2015 fish surveys occurred throughout the Big Darby Creek watershed as part of the Ohio Environmental Protection Agency's (OEPA's) water-quality monitoring program. A total of 96,471 fish representing 85 different species and 6 hybrids, were collected at 93 sampling locations throughout the Big Darby Creek study area during the 2014 sampling season. Fish surveys were conducted at numerous sites in Big Darby Creek between 2001 and 2019, using a variety of survey techniques, including seining, boat electrofishing, backpack electrofishing, and dip netting (Zimmerman 2020, pers. comm.). Another survey was also conducted annually in the Big Darby Creek from 1970 to 2005 (Cavender 1999, pers. comm.; Kibbey 2016, pers. comm.).

These surveys also included extensive searches for populations of Scioto madtoms outside of the type locality in Big Darby Creek (Kibbey 2016, pers. comm.). In addition to fish surveys in the Big Darby Creek watershed, the OEPA has conducted a number of fish studies throughout the Upper, Middle, and Lower Scioto River watershed as part of the agency's Statewide Water Quality Monitoring Program (OEPA 1993a, 1993b, 1999, 2002, 2004, 2006, 2008, 2012, 2019, entire). These surveys have never detected a Scioto madtom.

Time Since Last Detection

No collections of the Scioto madtom have been made since 1957. Given that the extensive fish surveys conducted since 1970 within the species' historical location, as well as along the entire length of Big Darby Creek and in the greater Scioto River watershed, have recorded three other species of madtom but not the Scioto madtom, it is highly unlikely that the Scioto madtom has persisted without detection.

Other Considerations Applicable to the Species' Status

The habitat that once supported the Scioto madtom has been drastically altered, primarily via strong episodic flooding. Although periodic flooding has historically been a part of Big Darby Creek's hydrological regime, many of the original riffles where Scioto madtoms were collected from just downstream of the U.S. Route 104 Bridge to approximately one-half mile upstream have been washed out to the

point where they are nearly gone (Kibbey 2009, pers. comm.). Furthermore, pollution sources throughout the Scioto River watershed, including row crop agriculture, development, and urban runoff, have reduced the water quality and suitability of habitat for madtoms (OEPA 2012, pp. 1–2).

III. Analysis

There has been no evidence of the continued existence of the Scioto madtom since 1957. Surveys for the species were conducted annually between 1970 and 2005, at the only known location for the species. Additional surveys in the Big Darby Creek watershed have never found other locations of Scioto madtom. After decades of survey work with no individuals being detected, it is extremely unlikely that the species is extant. Further, available habitat for the species in the only location where it has been documented is now much reduced, which supports the conclusion that the species is likely extinct.

IV. Conclusion

We conclude that the Scioto madtom is extinct and, therefore, should be delisted. This conclusion is based on a lack of detections during numerous surveys conducted for the species and significant alteration of habitat at its known historical location.

Mussels

Flat Pigtoe (Pleurobema Marshalli)

I. Background

Please refer to our proposed rule, published on September 30, 2021 (86 FR 54298), for a thorough review of the species background and legal history. Here, we will briefly summarize the species background. On April 7, 1987, we listed the flat pigtoe (formerly known as Marshall's mussel), as endangered, primarily due to habitat alteration from a free-flowing riverine system to an impounded system (52 FR 11162). Two 5-year reviews were completed in 2009 (initiated on September 8, 2006; see 71 FR 53127) and 2015 (initiated on March 25, 2014; see 79 FR 16366); both recommended delisting the flat pigtoe due to extinction. The Service solicited peer review from six experts for both 5-year reviews from State, Federal, university, and museum biologists with known expertise and interest in Mobile River Basin mussels (USFWS 2009, pp. 23–24; USFWS 2015, pp. 15–16); we received responses from three of the peer reviewers, and they concurred with the content and conclusion that the species is extinct.

The flat pigtoe was described in 1927, from specimens collected in the Tombigbee River (USFWS 1989, p. 2). The shell of the flat pigtoe had pustules or welts on the postventral surface, and the adults were subovate in shape and approximately 2.4 inches long and 2 inches wide (USFWS 1989, p. 2). Freshwater mussels of the Mobile River Basin, such as the flat pigtoe, are most often found in clean, fast-flowing water in stable sand, gravel, and cobble/gravel substrates that are free of silt (USFWS 2000, p. 81). They are typically found buried in the substrate in shoals and runs (USFWS 2000, p. 81). This type of habitat has been nearly eliminated within the historical range of the species because of the construction of the Tennessee-Tombigbee Waterway in 1984, which created a dredged, straightened navigation channel and a series of impoundments that inundated nearly all riverine mussel habitat (USFWS 1989, p. 1).

The flat pigtoe was historically known from the Tombigbee River from just above Tibbee Creek near Columbus, Mississippi, downstream to Epes, Alabama (USFWS 1989, p. 3). Surveys in historical habitat over the past three decades have failed to locate the species, and all historical habitat is impounded or modified by channelization and impoundments (USFWS 2015, p. 5). No live or freshly dead shells have been observed since the species was listed in 1987 (USFWS 2009, p. 4; USFWS 2015, p. 5).

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

Detection of rare, cryptic, benthic-dwelling animals like freshwater mussels is challenging and can be affected by a variety of factors, including:

- Size of the mussel (smaller mussels, including juvenile mussels, can be more difficult to find in complex substrates than larger mussels, and survey efforts must be thorough enough to try to detect smaller mussels);
- Behavior of the mussel (some are found subsurface, some at the surface, and some above the surface, and position can vary seasonally [some are more visible during the reproductive phase when they need to come into contact with host fish; therefore, surveys likely need to be conducted during different times of the year to improve detection]);
- Substrate composition (it can be easier to see/feel mussels in sand and clay than in gravel or cobble; therefore, surveys need to include all substrate types because mussels can fall off host fish into a variety of substrates);
- Size of river (larger rivers usually have more expansive habitat areas to search and are sometimes deep, requiring specialized survey techniques such as self-contained underwater breathing apparatus [SCUBA]);
- Flow conditions (visibility can be affected in very fast-flowing, very shallow, or turbid conditions; therefore, surveys need to use tactile or excavation methods, or delay until turbidity conditions improve);
- Surveyor experience (finding mussels requires a well-developed search image, knowledge of instream habitat dynamics, and ability to identify and distinguish species); and
- Survey methodology and effort (excavation and sifting of stream bottom can detect more mussels than visual or tactile surveys).

All of these challenges are taken into account when developing survey protocols for any species of freshwater mussel, including the flat pigtoe. The flat pigtoe was medium-sized (but juveniles were very small) and most often found buried in sand, gravel, or cobble in fast-flowing runs. However, mussels can be found in suboptimal conditions, depending on where they dropped off of the host fish. Therefore, all of the above-mentioned considerations need to be accounted for when trying to detect this mussel species. Despite detection challenges, many well-planned, comprehensive surveys by experienced State and Federal biologists have been carried out, and those surveys have not been able to locate extant populations of flat pigtoe in the Tombigbee River (USFWS 2000, p. 81; USFWS 2015, p. 5).

Survey Effort

Prior to listing, freshly dead shells of flat pigtoe were collected in 1980, from the Tombigbee River, Lowndes County, Mississippi (USFWS 2009, pp. 4–5), and a 1984 survey of the Gainesville Bendway of Tombigbee River also found shells of the flat pigtoe (USFWS 1989, p. 4). After listing in 1987, surveys in 1988 and 1990 only found weathered, relict shells of the flat pigtoe below Heflin Dam, thus casting doubt on the continued existence of the species in the Gainesville Bendway (USFWS 1989, p. 4; USFWS 2009, p. 5). Over the past three decades, surveys between 1990–2001, and in 2002, 2003, 2009, 2011, and 2015, of potential habitat throughout the historical range, including intensive surveys of the Gainesville Bendway, where adequate

habitat and flows may still occur below the Gainesville Dam on the Tombigbee River in Alabama, have failed to find any live or dead flat pigtoes (USFWS 2000, p. 81).

Time Since Last Detection

The flat pigtoe has not been collected alive since completion of the Tennessee-Tombigbee Waterway in 1984 (USFWS 2000, p. 81; USFWS 2015, p. 5). Mussel surveys within the Tombigbee River drainage during 1984–2015 failed to document the presence of the flat pigtoe (USFWS 2015, p. 8).

Other Considerations Applicable to the Species' Status

Habitat modification is the major cause of decline of the flat pigtoe (USFWS 2000, p. 81). Construction of the Tennessee-Tombigbee Waterway for navigation adversely impacted mussels and their habitat by physical destruction during dredging, increasing sedimentation, reducing water flow, and suffocating juveniles with sediment (USFWS 1989, p. 6). Other threats include channel improvements such as clearing and snagging, as well as sand and gravel mining, diversion of flood flows, and water removal for municipal use. These activities impact mussels by altering the river substrate, increasing sedimentation, changing water flows, and killing individuals via dredging and snagging (USFWS 1989, pp. 6–7). Runoff from fertilizers and pesticides results in algal blooms and excessive growth of other aquatic vegetation, resulting in eutrophication and death of mussels due to lack of oxygen (USFWS 1989, p. 7). The cumulative impacts of habitat degradation due to these factors likely led to flat pigtoe populations becoming scattered and isolated over time. Low population levels increased the difficulty of successful reproduction (USFWS 1989, p. 7). When individuals become scattered, the opportunity for egg fertilization is diminished. Coupled with habitat changes that result in reduced host fish interactions, the spiral of failed reproduction leads to local extirpation and eventual extinction of the species (USFWS 1989, p. 7).

III. Analysis

There has been no evidence of the continued existence of the flat pigtoe for more than three decades. Mussel surveys within the Tombigbee River drainage from 1984–2015 have failed to document the presence of the species (USFWS 2015, p. 8). All known historical habitat has been altered or degraded by impoundments, and the species is presumed extinct by most authorities.

IV. Conclusion

We conclude that the flat pigtoe is extinct and, therefore, should be delisted. This conclusion is based on significant alteration of all known historical habitat and lack of detections during numerous surveys conducted throughout the species' range.

Southern Acornshell (Epioblasma Othcaloogensis)

I. Background

Please refer to our proposed rule, published on September 30, 2021 (86 FR 54298), for a thorough review of the species background and legal history. Here, we will briefly summarize the species background. On March 17, 1993, we listed the southern acornshell as endangered, primarily due to habitat modification, sedimentation, and water-quality degradation (58 FR 14330). We designated critical habitat on July 1, 2004 (69 FR 40084). Two 5-year reviews were completed in 2008 (initiated on June 14, 2005; see 70 FR 34492) and 2018 (initiated on September 23, 2014; see 79 FR 56821), both recommending delisting the southern acornshell due to extinction. We solicited peer review from eight experts for both 5-year reviews from State, Federal, university, nongovernmental, and museum biologists with known expertise and interest in Mobile River Basin mussels (Service 2008, pp. 36–37; Service 2018, p. 15); we received responses from five of the peer reviewers, who all concurred with the content and conclusion that the species is extinct.

The southern acornshell was described in 1857 from Othcalooga Creek in Gordon County, Georgia (58 FR 14330 at 14331, March 17, 1993). Adult southern acornshells were round to oval in shape and approximately 1.2 inches in length (Service 2000, p. 57). *Epioblasma othcaloogensis* was included as a synonym of *E. penita* and was considered to be an ectomorph of the latter (58 FR 14330 at 14331, March 17, 1993). The Service recognizes *Unio othcaloogensis* (Lea) and *U. modicellus* (Lea) as synonyms of *Epioblasma othcaloogensis.*

The southern acornshell was historically found in shoals in small rivers to small streams in the Coosa and Cahaba River systems (Service 2000, p. 57). As with many of the freshwater mussels in the Mobile River Basin, it was found in stable sand, gravel, cobble substrate in moderate to swift currents. The species had a sexual reproduction strategy and required a host fish to complete the life cycle. Historically, the species occurred in upper Coosa River tributaries and the Cahaba River in Alabama, Georgia, and Tennessee (Service 2000, p. 57). In the upper Coosa River system, the southern acornshell occurred in the Conasauga River, Cowan's Creek, and Othcalooga Creek (58 FR 14330 at 14331, March 17, 1993). At the time of listing in 1993, the species was estimated to persist in low numbers in streams in the upper Coosa River drainage in Alabama and Georgia, and possibly in the Cahaba River (58 FR 14330 at 14331, March 17, 1993; Service 2018, p. 6). The southern acornshell was last collected in 1973, from the Conasauga River in Georgia and from Little Canoe Creek, near the Etowah and St. Clair County line, Alabama. It has not been collected from the Cahaba River since the 1930s (Service 2018, p. 5).

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

Detection of rare, cryptic, benthic-dwelling animals like freshwater mussels is challenging and can be affected by a variety of factors. Please refer to ''Species Detectability'' for the flat pigtoe, above, for the descriptions of these factors. The southern acornshell was small-sized (with very small juveniles) and most often found buried in sand, gravel, or cobble in fast flowing runs. However, mussels can be found in sub-optimal conditions, depending on where they dropped off of the host fish. Therefore, all of the detection considerations need to be accounted for when trying to detect this mussel species. Despite detection challenges, many well-planned, comprehensive surveys by experienced State and Federal biologists have been carried out, and those surveys have not been able to locate extant populations of southern acornshell (Service 2000, p. 57; Service 2008, p. 20; Service 2018, p. 7).

Survey Effort

Prior to listing, southern acornshell was observed during surveys in the upper Coosa River drainage in Alabama and Georgia in 1966–1968 and in 1971–1973, by Hurd (58 FR 14330 at 14331, March 17, 1993). Records of the species in the Cahaba River are from surveys at Lily Shoals in Bibb County, Alabama, in 1938, and from Buck Creek (Cahaba River tributary), Shelby County, Alabama, in the early 1900s (58 FR 14330 at 14331, March 17, 1993). Both the 2008 and 2018 5-year reviews reference multiple surveys by experienced Federal, State, and private biologists—17 survey reports from 1993–2006 and 6 survey reports from 2008–2017—and despite these repeated

surveys of historical habitat in both the Coosa and Cahaba River drainages, no living animals or fresh or weathered shells of the southern acornshell have been located (Service 2008, p. 19; Service 2018, p. 6).

Time Since Last Detection

The most recent records for the southern acornshell were from tributaries of the Coosa River in 1966–1968 and 1974, and the Cahaba River in 1938 (58 FR 14330 at 14331, March 17, 1993; Service 2008, p. 19; Service 2018, p. 5). No living populations of the southern acornshell have been located since the 1970s (Service 2000, p. 57; Service 2008, p. 20; Service 2018, p. 7).

Other Considerations Applicable to the Species' Status

Habitat modification was the major cause of decline of the southern acornshell (Service 2000, p. 57). Other threats included channel improvements such as clearing and snagging, as well as sand and gravel mining, diversion of flood flows, and water removal for municipal use; these activities impacted mussels by alteration of the river substrate, increasing sedimentation, alteration of water flows, and direct mortality from dredging and snagging (Service 2000, pp. 6–13). Runoff from fertilizers and pesticides results in algal blooms and excessive growth of other aquatic vegetation, resulting in eutrophication and death of mussels due to lack of oxygen (Service 2000, p.13). The cumulative impacts of habitat degradation likely led to southern acornshell populations becoming scattered and isolated over time. Low population levels mean increased difficulty for successful reproduction (Service 2000, p.14). When individuals become scattered, the opportunity for a female southern acornshell to successfully fertilize eggs is diminished, and the spiral of failed reproduction leads to local extirpation and eventual extinction of the species (Service 2000, p. 14).

III. Analysis

There has been no evidence of the continued existence of the southern acornshell for over five decades; the last known specimens were collected in the early 1970s. When listed in 1993, it was thought that the southern acornshell was likely to persist in low numbers in the upper Coosa River drainage and, possibly, in the Cahaba River. Numerous mussel surveys have been completed within these areas, as well as other areas within the historical range of the species since the listing, with no success. Although other federally listed mussels have been found by mussel experts during these surveys, no live or freshly dead specimens of the southern acornshell have been found (Service 2018, p. 7). The species is extinct.

IV. Conclusion

We conclude that the southern acornshell is extinct and, therefore, should be delisted. This conclusion is based on significant alteration of known historical habitat and lack of detections during numerous surveys conducted throughout the species' range.

Stirrupshell (Quadrula Stapes)

I. Background

Please refer to our proposed rule, published on September 30, 2021 (86 FR 54298), for a thorough review of the species background and legal history. Here, we will briefly summarize the species background. On April 7, 1987, we listed the stirrupshell as endangered, primarily due to habitat alteration from a free-flowing riverine system to an impounded system (52 FR 11162). Two 5-year reviews were completed in 2009 (initiated on September 8, 2006; see 71 FR 53127) and 2015 (initiated on March 25, 2014; see 79 FR 16366); both recommended delisting the stirrupshell due to extinction. We solicited peer review from six experts for both 5-year reviews from State, Federal, university, and museum biologists with known expertise and interest in Mobile River Basin mussels (Service 2009, pp. 23–24; Service 2015, pp. 15–16); we received responses from three of the peer reviewers, and they concurred with the content and conclusion that the species is extinct.

The stirrupshell was described as *Unio stapes* in 1831, from the Alabama River (Stansbery 1981, entire). Other synonyms are *Margarita* (*Unio*) *stapes* in 1836, *Margaron* (*Unio*) *stapes* in 1852, *Quadrula stapes* in 1900, and *Orthonymus stapes* in 1969 (Service 1989, pp. 2–3). Adult stirrupshells were quadrate in shape and reached a size of approximately 2 inches long and 2 inches wide. The stirrupshell differed from other closely related species by the presence of a sharp posterior ridge and truncated narrow rounded point posteriorly on its shell, and it had a tubercled posterior surface (Service 1989, p. 3; Service 2000, p. 85). Freshwater mussels of the Mobile River Basin, such as the stirrupshell, are most often found in clean, fast-flowing water in stable sand, gravel, and cobble gravel substrates that are free of silt (Service 2000, p. 85). They are typically found buried in the substrate in runs (Service 2000, p. 85). This type of habitat has been nearly eliminated in the Tombigbee River because of the construction of the Tennessee-Tombigbee Waterway, which created a dredged, straightened navigation channel and series of impoundments that inundated much of the riverine mussel habitat (Service 1989, p. 1).

The stirrupshell was historically found in the Tombigbee River from Columbus, Mississippi, downstream to Epes, Alabama; the Sipsey River, a tributary to the Tombigbee River in Alabama; the Black Warrior River in Alabama; and the Alabama River (Service 1989, p. 3). Surveys in historical habitat over the past three decades have failed to locate the species, as all historical habitat is impounded or modified by channelization and impoundments (Tombigbee and Alabama Rivers) or impacted by sediment and nonpoint pollution (Sipsey and Black Warrior Rivers) (Service 1989, p. 6; Service 2000, p. 85; Service 2015, p. 5). No live or freshly dead shells have been observed since the species was listed in 1987 (Service 2009, p. 6; Service 2015, p. 7). A freshly dead shell was last collected from the lower Sipsey River in 1986 (Service 2000, p. 85).

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

Detection of rare, cryptic, benthic-dwelling animals like freshwater mussels is challenging, and can be affected by a variety of factors. Please refer to ''Species Detectability'' for the flat pigtoe, above, for the descriptions of these factors. The stirrupshell was medium-sized (with very small juveniles) and most often found buried in sand, gravel, or cobble in fast flowing runs. However, mussels can be found in sub-optimal conditions, depending on where they dropped off of the host fish. Therefore, all of the detection considerations need to be accounted for when trying to detect this mussel species. Despite detection challenges, many well-planned, comprehensive surveys by experienced State and Federal biologists have been carried out, and those surveys have not been able to locate extant populations of stirrupshell (Service 1989, pp. 3–4; Service 2000, p. 85; Service 2015, pp. 7–8).

Survey Effort

Prior to listing in 1987, stirrupshell was collected in 1978, from the Sipsey River, and a 1984 and 1986 survey of the Sipsey River found freshly dead shells; a 1984 survey of the Gainsesville Bendway of Tombigbee River found

freshly dead shells of the stirrupshell (Service 1989, p. 4; Service 2000, p. 85). After listing, surveys in 1988 and 1990 only found weathered, relict shells of the stirrupshell from the Tombigbee River at the Gainesville Bendway and below Heflin Dam, which cast doubt on the continued existence of the species in the mainstem Tombigbee River (Service 1989, p. 4; Service 2009, p. 6). Over the past three decades, repeated surveys (circa 1988, 1998, 2001, 2002, 2003, 2006, 2011) of unimpounded habitat in the Sipsey and Tombigbee Rivers, including intensive surveys of the Gainesville Bendway, have failed to find any evidence of stirrupshell (Service 2009, p. 6; Service 2015, p. 7).

The stirrupshell was also known from the Alabama River; however, over 92 hours of dive bottom time were expended searching appropriate habitats for imperiled mussel species between 1997–2007 without encountering the species (Service 2009, p. 6), and a survey of the Alabama River in 2011 also did not find stirrupshell (Service 2015, p. 5). Surveys of the Black Warrior River in 1993 and from 2009–2012 (16 sites) focused on finding federally listed and State conservation concern priority mussel species but did not find any stirrupshells (Miller 1994, pp. 9, 42; McGregor et al. 2009, p. 1; McGregor et al. 2013, p. 1).

Time Since Last Detection

The stirrupshell has not been collected alive since the Sipsey River was surveyed in 1978 (Service 1989, p. 4); one freshly dead shell was last collected from the Sipsey River in 1986 (Service 2000, p. 85). In the Tombigbee River, the stirrupshell has not been collected alive since completion of the Tennessee-Tombigbee Waterway in 1984 (Service 2015, p. 7). Mussel surveys within the Tombigbee River drainage during 1984–2015 failed to document the presence of the stirrupshell (Service 2015, p. 8). The stirrupshell has not been found alive in the Black Warrior River or the Alabama River since the early 1980s (Service 1989, p. 3).

Other Considerations Applicable to the Species' Status

Because the stirrupshell occurred in similar habitat type and area as the flat pigtoe, it faced similar threats. Please refer to the discussion for the flat pigtoe for more information.

III. Analysis

There has been no evidence of the continued existence of the stirrupshell for nearly four decades; the last live individual was observed in 1978 and the last freshly dead specimen was from 1986. Mussel surveys within the Tombigbee River drainage (including the Sipsey and Black Warrior tributaries) from 1984–2015, and the Alabama River from 1997–2007 and in 2011, have failed to document the presence of the species (Service 2015, pp. 5, 8). All known historical habitat has been altered or degraded by impoundments and nonpoint source pollution, and the species is presumed extinct by most authorities.

IV. Conclusion

We conclude that the stirrupshell is extinct and, therefore, should be delisted. This conclusion is based on significant alteration of all known historical habitat and lack of detections during numerous surveys conducted throughout the species' range.

Upland Combshell (Epioblasma Metastriata)

I. Background

Please refer to our proposed rule, published on September 30, 2021 (86 FR 54298), for a thorough review of the species background and legal history. Here, we will briefly summarize the species background. On March 17, 1993, we listed the upland combshell as endangered, primarily due to habitat modification, sedimentation, and water-quality degradation (58 FR 14330). We designated critical habitat on July 1, 2004 (69 FR 40084). Two 5-year reviews were completed in 2008 (initiated on June 14, 2005; see 70 FR 34492) and 2018 (initiated on September 23, 2014; see 79 FR 56821), both recommending delisting the upland combshell due to extinction. We solicited peer review from eight experts for both 5-year reviews from State, Federal, university, nongovernmental, and museum biologists with known expertise and interest in Mobile River Basin mussels (Service 2008, pp. 36–37; Service 2018, p. 15); we received responses from five of the peer reviewers, who concurred with our conclusion that the species is extinct.

The upland combshell was described in 1838, from the Mulberry Fork of the Black Warrior River near Blount Springs, Alabama (58 FR 14330 at 14331, March 17, 1993). Adult upland combshells were rhomboidal to quadrate in shape and were approximately 2.4 inches in length (58 FR 14330–14331, March 17, 1993).

The upland combshell was historically found in shoals in rivers and large streams in the Black Warrior, Cahaba, and Coosa River systems above the Fall Line in Alabama, Georgia, and Tennessee (Service 2000, p. 61). As with many of the freshwater mussels in the Mobile River Basin, it was found in stable sand, gravel, and cobble in moderate to swift currents. The historical range included the Black Warrior River and tributaries (Mulberry Fork and Valley Creek); Cahaba River and tributaries (Little Cahaba River and Buck Creek); and the Coosa River and tributaries (Choccolocco Creek and Etowah, Conasauga, and Chatooga Rivers) (58 FR 14330 at 14331, March 17, 1993). At the time of listing in 1993, the species was estimated to be restricted to the Conasauga River in Georgia, and possibly portions of the upper Black Warrior and Cahaba River drainages (58 FR 14330 at 14331, March 17, 1993; Service 2008, p. 19). The upland combshell was last collected in the Black Warrior River drainage in the early 1900s; in the Coosa River drainage in 1986, from the Conasauga River near the Georgia/Tennessee State line; and the Cahaba River drainage in the early 1970s (58 FR 14330 at 14331, March 17, 1993; Service 2000, p. 61; Service 2018, p. 5).

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

Detection of rare, cryptic, benthic-dwelling animals like freshwater mussels is challenging, and can be affected by a variety of factors. Please refer to ''Species Detectability'' for the flat pigtoe, above, for the descriptions of these factors. The upland combshell was small-sized (with very small juveniles) and most often found buried in sand, gravel, or cobble in fast flowing runs. However, mussels can be found in sub-optimal conditions, depending on where they dropped off of the host fish. Therefore, all of the detection considerations need to be accounted for when trying to detect this mussel species. Despite detection challenges, many well-planned, comprehensive surveys by experienced State and Federal biologists have been carried out, and those surveys have not been able to locate extant populations of upland combshell (Service 2008, p. 19; Service 2018, p. 5).

Survey Effort

Prior to listing in 1993, upland combshell was observed during surveys in the Black Warrior River drainage in the early 1900s; repeated surveys in this drainage in 1974, 1980–1982, 1985, and 1990 did not encounter the species (58 FR 14330 at 14331, March 17, 1993). The upland combshell was observed in the Cahaba River drainage in 1938 and

in 1973, but a 1990 survey failed to find the species in the Cahaba River drainage (58 FR 14330 at 14331, March 17, 1993). The species was observed in the upper Coosa River drainage in Alabama and Georgia in 1966–1968, but not during 1971–1973 surveys; a single specimen was collected in 1988 from the Conasauga River (58 FR 14330 at 14331, March 17, 1993). Both the 2008 and 2018 5-year reviews reference multiple surveys by experienced Federal, State, and private biologists—18 survey reports from 1993–2006 and 10 survey reports from 2008–2017—and despite these repeated surveys of historical habitat in the Black Warrior, Cahaba, and Coosa River drainages, no living animals or fresh or weathered shells of the upland combshell have been located (Service 2008, p. 19; Service 2018, p. 5).

Time Since Last Detection

The most records for the upland combshell are many decades old: from tributaries of the Black Warrior in early 1900s, from the Cahaba River drainage in the early 1970s, and from the Coosa River drainage in the mid-1980s (58 FR 14330 at 14331, March 17, 1993; Service 2008, p. 19; Service 2018, p. 5). No living populations of the upland combshell have been located since the mid-1980s (Service 2000, p. 61; Service 2008, p. 20; Service 2018, p. 7).

Other Considerations Applicable to the Species' Status

Because the upland combshell occurred in similar habitat type and area as the southern acornshell, it faced similar threats. Please refer to the discussion of the southern acornshell, above, for more information on any other overarching consideration.

III. Analysis

There has been no evidence of the continued existence of the upland combshell for over three decades; the last known specimens were collected in the late-1980s. When listed, it was thought that the upland combshell was likely restricted to the Conasauga River in Georgia, and possibly portions of the upper Black Warrior and Cahaba River drainages. Numerous mussel surveys have been completed within these areas, as well as other areas within the historical range of the species since the late 1980s, with no success. Although other federally listed mussels have been found by mussel experts during these surveys, no live or freshly dead specimens of the upland combshell have been found (Service 2018, p. 7). The species is extinct.

IV. Conclusion

We conclude that the upland combshell is extinct and, therefore, should be delisted. This conclusion is based on significant alteration of known historical habitat and lack of detections during numerous surveys conducted throughout the species' range.

Green Blossom (Epioblasma Torulosa Gubernaculum)

I. Background

Please refer to our proposed rule, published on September 30, 2021 (86 FR 54298), for a thorough review of the species background and legal history. Here, we will briefly summarize the species background. On June 14, 1976, we listed the green blossom as endangered (41 FR 24062). At the time of listing, the single greatest factor contributing to the species' decline was the alteration and destruction of stream habitat due to impoundments. Two 5-year reviews were completed in 2007 (initiated on September 20, 2005; see 70 FR 55157) and 2017 (initiated on March 25, 2014; see 79 FR 16366); both reviews recommended delisting due to extinction. For the 2017 5-year review, the Service solicited peer review from eight peer reviewers including Federal and State biologists with known expertise and interest in blossom pearly mussels. All eight peer reviewers indicated there was no new information on the species, or that the species was presumed extirpated or extinct from their respective State(s) (USFWS 2017, pp. 8–9).

The green blossom was described in 1865, with no type locality given for the species. However, all historical records indicate the species was restricted to the upper headwater tributary streams of the Tennessee River above Knoxville (USFWS 1984, pp. 1–2). A comprehensive description of shell anatomy is provided in our 5-year review and supporting documents (Parmalee and Bogan 1998, pp. 104–107).

The green blossom was always extremely rare and never had a wide distribution (USFWS 1984, p. 9). Freshwater mussels found within the Cumberland rivers and tributary streams, such as the green blossom, are most often observed in clean, fast-flowing water in substrates that contain relatively firm rubble, gravel, and sand substrates swept free from siltation (USFWS 1984, p. 5). They are typically found buried in substrate in shallow riffle and shoal areas. This type of habitat has been nearly eliminated by impoundment of the Tennessee and Cumberland Rivers and their headwater tributary streams (USFWS 1984, p. 9).

The genus *Epioblasma* as a whole has suffered extensively because members of this genus are riverine, typically found only in streams that are shallow with sandy-gravel substrate and rapid currents (Stansbery 1972, pp. 45–46). Eight species of *Epioblasma* were extinct at the time of the recovery plan, primarily due to impoundments, siltation, and pollution (USFWS 1984, p. 6).

Stream impoundment affects species composition by eliminating those species not capable of adapting to reduced flows and altered temperatures. Tributary dams typically have storage impoundments with cold water discharges and sufficient storage volume to cause the stream below the dam to differ significantly from pre-impoundment conditions. These hypolimnial discharges result in altered temperature regimes, extreme water-level fluctuations, reduced turbidity, seasonal oxygen deficits, and high concentrations of certain heavy metals (Tennessee Valley Authority (TVA) 1980, entire).

Siltation within the range of the green blossom, resulting from strip mining, coal washing, dredging, farming, and road construction, also likely severely affected the species. Since most freshwater mussels are riverine species that require clean, flowing water over stable, silt-free rubble, gravel, or sand shoals, smothering caused by siltation can be detrimental. Pollution, primarily from wood pulp, paper mills, and other industries, has also severely impacted many streams within the historical range of the species.

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

Detection of rare, cryptic, benthic-dwelling animals like freshwater mussels is challenging, and can be affected by a variety of factors. Please refer to ''Species Detectability'' for the flat pigtoe, above, for the descriptions of these factors. The green blossom was a medium-sized mussel most often found buried in substrate in shallow riffle and shoal areas. However, mussels can be found in sub-optimal conditions, depending on where they dropped off of the host fish.

Survey Effort

As of 1984, freshwater mussel surveys by numerous individuals had failed to document any living populations of green blossom in any Tennessee River tributary other than the Clinch River.

The recovery plan cites several freshwater mussel surveys (which took place between 1972 and 2005) of the Powell River; North, South, and Middle Forks of the Holston River; Big Moccasin Creek; Copper Creek; Nolichucky River; and French Broad River, all of which failed to find living or freshly dead green blossom specimens (USFWS 1984, p. 5). Annual surveys continue to be conducted in the Clinch River since 1972. Biologists conducting those surveys have not reported live or freshly dead individuals of the green blossom (Ahlstedt et al. 2016, entire; Ahlstedt et al. 2017, entire; Jones et al. 2014, entire; Jones et al. 2018, entire).

Time Since Last Detection

The last known record for the green blossom was a live individual collected in 1982, in the Clinch River at Pendleton Island, Virginia.

III. Analysis

Habitat within the historical range of the green blossom has been significantly altered by water impoundments, siltation, and pollution, including at Pendleton Island on the Clinch River, the site of the last known occurrence of the species (Jones et al. 2018, pp. 36–56). The last known collection of the species was 41 years ago, and numerous surveys have been completed within the known range of the species over these 41 years. Although other federally listed mussels have been found by these experts during these surveys, no live or freshly dead specimens of the green blossom have been found (Ahlstedt et al. 2016, pp. 1–18; Ahlstedt et al. 2017, pp. 213–225). Mussel experts conclude that the species is extinct.

IV. Conclusion

We conclude the green blossom is extinct and, therefore, should be delisted. This conclusion is based on lack of detections during surveys and searches conducted throughout the species' range since the green blossom was last observed in 1982, and the amount of significant habitat alteration that has occurred within the range of the species, rendering most of the species' historical habitat unlikely to support the species.

Tubercled Blossom (Epioblasma Torulosa Torulosa)

I. Background

Please refer to our proposed rule, published on September 30, 2021 (86 FR 54298), for a thorough review of the species background and legal history. Here, we will briefly summarize the species background. On June 14, 1976, we listed the tubercled blossom as endangered (41 FR 24062). At the time of listing, the greatest factor contributing to the species' decline was the alteration and destruction of stream habitat due to impoundments. The most recent 5-year review, completed in 2017 (initiated on March 25, 2014; see 79 FR 16366), indicated that the species was extinct, and recommended delisting. The Service solicited peer review from three peer reviewers for the 2017 5-year review from Federal and State biologists with known expertise and interest in blossom pearly mussels. All three peer reviewers indicated there was no new information on the species, all populations of the species were extirpated from their respective States, and the species was presumed extinct.

The tubercled blossom was described as *Amblema torulosa* from the Ohio and Kentucky Rivers (Rafinesque 1820; referenced in USFWS 1985, p. 2). All records for this species indicate it was widespread in the larger rivers of the eastern United States and southern Ontario, Canada (USFWS 1985, p. 2). Records for this species included the Ohio, Kanawha, Scioto, Kentucky, Cumberland, Tennessee, Nolichucky, Elk, and Duck Rivers (USFWS 1985, pp. 3–6). Historical museum records gathered subsequently add the Muskingum, Olentangy, Salt, Green, Barren, Wabash, White, East Fork White, and Hiwassee Rivers to its range (Service 2011, p. 5). The total historical range includes the States of Alabama, Illinois, Indiana, Kentucky, Ohio, Tennessee, and West Virginia. This species was abundant in archaeological sites along the Tennessee River in extreme northwestern Alabama, making it likely that the species also occurred in adjacent northeastern Mississippi where the Tennessee River borders that State (Service 2011, p. 5).

The tubercled blossom was medium-sized, reaching about 3.6 inches (9.1 centimeters) in shell length, and could live 50 years or more. The shell was irregularly egg-shaped or elliptical, slightly sculptured, and corrugated with distinct growth lines. The outer surface was smooth and shiny; was tawny, yellowish-green, or straw-colored; and usually had numerous green rays (Parmalee and Bogan 1980, pp. 22–23).

The genus *Epioblasma* as a whole has suffered extensively because members of this genus are characteristic riffle or shoal species, typically found only in streams that are shallow with sandy-gravel substrate and rapid currents (Parmalee and Bogan 1980, pp. 22–23). Eight species of *Epioblasma* were extinct at the time of the 1985 recovery plan. The elimination of these species has been attributed to impoundments, barge canals, and other flow alteration structures that have eliminated riffle and shoal areas (USFWS 1985, p. 1).

The single greatest factor contributing to the decline of the tubercled blossom is the alteration and destruction of stream habitat due to impoundments for flood control, navigation, hydroelectric power production, and recreation. Siltation is another factor that has severely affected the tubercled blossom. Increased silt transport into waterways due to strip mining, coal washing, dredging, farming, logging, and road construction increased turbidity and consequently reduced the depth of light penetration and created a blanketing effect on the substrate. A third factor is the impact caused by various pollutants. An increasing number of streams throughout the tubercled blossom's range receive municipal, agricultural, and industrial waste discharges.

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

Detection of rare, cryptic, benthic-dwelling animals like freshwater mussels is challenging, and can be affected by a variety of factors. Please refer to ''Species Detectability'' for the flat pigtoe, above, for the descriptions of these factors. The tubercled blossom was a large-river species most often found inhabiting parts of those rivers that are shallow with sandy-gravel substrate and rapid currents. However, mussels can be found in sub-optimal conditions, depending on where they dropped off of the host fish.

Survey Effort

All three rivers where the species was last located have been extensively sampled in the intervening years without further evidence of this species' occurrence, including Kanawha River, Nolichucky River, and Green River (Service 2011, p. 5).

Based on this body of survey information in large rivers in the Ohio River system, investigators have been considering this species as possibly extinct since the mid-1970s. The best reach of potential habitat remaining may be in the lowermost 50 miles of the free-flowing portion of the Ohio River, in Illinois and Kentucky. This reach is one of the last remnants of large-river habitat remaining in the entire historical range of the tubercled blossom. In our 2011 5-year review for the tubercled blossom, we hypothesized that this mussel might be found in this stretch of the Ohio River. Unfortunately, mussel experts have not reported any new collections

of the species (USFWS 2017, p. 8). Additionally, State biologists have conducted extensive surveys within the Kanawha Falls area of the Kanawha River since 2005 and have found no evidence that the tubercled blossom still occurs there (USFWS 2017, p 4). This species is extinct.

Time Since Last Detection

The last individuals were collected live or freshly dead in 1969, in the Kanawha River, West Virginia, below Kanawha Falls; in 1968, in the Nolichucky River, Tennessee; and in 1963, in the Green River, Kentucky.

III. Analysis

The tubercled blossom has not been seen since 1969, despite extensive survey work in nearly all of the rivers of historical occurrence, prompting many investigators to consider this species as possibly extinct. According to the last two 5-year reviews, experts indicate that the species is presumed extinct throughout its range.

IV. Conclusion

We conclude the tubercled blossom is extinct and, therefore, should be delisted. This conclusion is based on the lack of detections during surveys and searches conducted throughout the species' range since the tubercled blossom was last sighted in 1969, and the significant habitat alteration that has occurred within the range of the species, rendering most of the species' habitat unable to support the life-history needs of the species.

Turgid Blossom (Epioblasma Turgidula)

I. Background

Please refer to our proposed rule, published on September 30, 2021 (86 FR 54298), for a thorough review of the species background and legal history. Here, we will briefly summarize the species background. On June 14, 1976, we listed the turgid blossom as endangered (41 FR 24062). At the time of listing, the single greatest factor contributing to the species' decline was the alteration and destruction of stream habitat due to impoundments. Two 5-year reviews were completed in 2007 (initiated on September 20, 2005; see 70 FR 55157) and 2017 (initiated on August 30, 2016; see 81 FR 59650); both reviews recommended delisting due to extinction. The Service solicited peer review from eight peer reviewers for the 2017 5-year review from Federal and State biologists with known expertise and interest in blossom pearly mussels (the turgid blossom was one of four species assessed in this 5-year review). All eight peer reviewers indicated there was no new information on the species, all populations of the species were extirpated from their respective States, and the species was presumed extinct.

The turgid blossom was described (Lea 1858; referenced in USFWS 1985, p. 2) as *Unio turgidulus* from the Cumberland River, Tennessee, and the Tennessee River, Florence, Alabama. It has been reported from the Tennessee River and tributary streams, including Shoal and Bear Creeks, and Elk, Duck, Holston, Clinch, and Emory Rivers (USFWS 2017, p. 4). Additional records are reported from the Cumberland River (USFWS 2017, p. 4) and from the Ozark Mountain Region, including Spring Creek, and Black and White Rivers (USFWS 2017, p. 6).

The turgid blossom was a medium-river, Cumberlandian-type mussel that was also reported from the Ozarks. These mussels could live 50 years or more. The genus *Epioblasma* as a whole has suffered extensively because members of this genus are characteristic riffle or shoal species, typically found only in streams that are shallow with sandy-gravel substrate and rapid currents (Parmalee et al. 1980, pp. 93–105). Eight species of *Epioblasma* were extinct at the time of the 1985 recovery plan. The elimination of these species has been attributed to impoundments, barge canals, and other flow alteration structures that have eliminated riffle and shoal areas (USFWS 1985, p. 1). The last known population of the turgid blossom occurred in the Duck River and was collected in 1972, at Normandy (Ahlstedt 1980, pp. 21–23). Field notes associated with this collection indicate that it was river-collected 100 yards above an old iron bridge. Water at the bridge one mile upstream was very muddy, presumably from dam construction above the site (Ahlstedt et al. 2017, entire). Additionally, surveys in the 1960s of the upper Cumberland Basin indicated an almost total elimination of the genus *Epioblasma,* presumably due to mine wastes (Neel and Allen 1964, as cited in USFWS 1985, p. 10).

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

Detection of rare, cryptic, benthic-dwelling animals like freshwater mussels is challenging, and can be affected by a variety of factors. Please refer to ''Species Detectability'' for the flat pigtoe, above, for the descriptions of these factors. The turgid blossom was a small-sized mussel most often found buried in substrate in shallow riffle and shoal areas. However, mussels can be found in sub-optimal conditions, depending on where they dropped off of the host fish.

Survey Effort

This species has not been found in freshwater mussel surveys conducted on the Duck River since the time of the Normandy Dam construction (Ahlstedt 1980, pp. 21–23), nor has it been reported from any other stream or river system. The most recent 5-year review notes that the Tennessee Wildlife Resources Agency had completed or funded surveys (1972–2005) for blossom pearly mussels in the Cumberland, Tennessee, Clinch, Duck, Elk, Emory, Hiwassee, Little, and Powell Rivers, yet there were no recent records of turgid blossom (USFWS 2017, p. 4). Surveys in the Ozarks have not observed the species since the early 1900s (USFWS 1985, p. 7).

Time Since Last Detection

The last known collection of the turgid blossom was a freshly dead specimen found in the Duck River, Tennessee, in 1972 by a biologist with the TVA. The species has not been seen in the Ozarks since the early 1900s (USFWS 1985, p. 7).

III. Analysis

Habitat within the historical range of the turgid blossom has been significantly altered by water impoundments, siltation, and pollution. The last known collection of the species was more than 45 years ago. Mussel experts conclude that the species is likely to be extinct. Numerous surveys have been completed within the known range of the species over the years. Although other federally listed mussels have been found by experts during these surveys, no live or freshly dead specimens of the turgid blossom have been found.

IV. Conclusion

We conclude the turgid blossom is extinct and, therefore, should be delisted. This conclusion is based on the lack of detections during surveys and searches conducted throughout the species' range since the turgid blossom was last sighted in 1972, and the significant habitat alteration that occurred within the range of the species, rendering most of the species' habitat unlikely to support the species.

Yellow Blossom (Epioblasma Florentina Florentina)

I. Background

Please refer to our proposed rule, published on September 30, 2021 (86 FR 54298), for a thorough review of the

species background and legal history. Here, we will briefly summarize the species background. On June 14, 1976, listed the yellow blossom as endangered (41 FR 24062). At the time of listing, the single greatest factor contributing to the species' decline was the alteration and destruction of stream habitat due to impoundments. Two 5-year reviews were completed in 2007 (initiated on September 20, 2005; see 70 FR 55157) and 2017 (initiated on March 25, 2014; see 79 FR 16366); both reviews recommended delisting due to extinction. The Service solicited peer review from eight peer reviewers for the 2017 5-year review from Federal and State biologists with known expertise and interest in blossom pearly mussels (the yellow blossom was one of four species assessed in this 5-year review). All eight peer reviewers indicated there was no new information on the species, all populations of the species were extirpated from their respective States, and the species was presumed extinct.

The yellow blossom was described (Lea 1857; referenced in USFWS 1985, pp. 2–3) as *Unio florentinus* from the Tennessee River, Florence and Lauderdale Counties, Alabama, and the Cumberland River, Tennessee. The yellow blossom was reported from Hurricane, Limestone, Bear, and Cypress Creeks, all tributary streams to the Tennessee River in northern Alabama (Ortmann 1925 p. 362; Bogan and Parmalee 1983, p. 23). This species was also reported from larger tributary streams of the lower and upper Tennessee River, including the Flint, Elk, and Duck Rivers (Isom et al. 1973, p. 439; Bogan and Parmalee 1983, pp. 22–23) and the Holston, Clinch, and Little Tennessee Rivers (Ortmann 1918, pp. 614–616). Yellow blossoms apparently occurred throughout the Cumberland River (Wilson and Clark 1914, p. 46; Ortmann 1918, p. 592; Neel and Allen 1964, p. 448).

The yellow blossom seldom achieved more than 2.4 inches (6 centimeters) in length. The slightly inflated valves were of unequal length, and the shell surface was marked by uneven growth lines. The shell was a shiny honey-yellow or tan with numerous green rays uniformly distributed over the surface. The inner shell surface was bluish-white (Bogan and Parmalee 1983, pp. 22–23).

The genus *Epioblasma* as a whole has suffered extensively because members of this genus are characteristic riffle or shoal species, typically found only in streams that are shallow with sandy-gravel substrate and rapid currents (Bogan and Parmalee 1983, pp. 22–23). Eight species of *Epioblasma* were extinct at the time of the 1985 recovery plan. The elimination of these species has been attributed to impoundments, barge canals, and other flow alteration structures that have eliminated riffle and shoal areas (USFWS 1985, p. 1).

The single greatest factor contributing to the decline of the yellow blossom, not only in the Tennessee Valley but in other regions as well, is the alteration and destruction of stream habitat due to impoundments for flood control, navigation, hydroelectric power production, and recreation. Siltation is another factor that has severely affected the yellow blossom. Increased silt transport into waterways due to strip mining, coal washing, dredging, farming, logging, and road construction increased turbidity and consequently reduced light penetration, creating a blanketing effect on the substrate. A third factor is the impact caused by various pollutants. An increasing number of streams throughout the mussel's range receive municipal, agricultural, and industrial waste discharges (USFWS 2017, p. 5).

II. Information on Detectability, Survey Effort, and Time Since Last Detection

Species Detectability

Detection of rare, cryptic, benthic-dwelling animals like freshwater mussels is challenging, and can be affected by a variety of factors. Please refer to ''Species Detectability'' for the flat pigtoe, above, for the descriptions of these factors. The yellow blossom was a small-sized mussel most often found buried in substrate in shallow riffle and shoal areas. However, mussels can be found in sub-optimal conditions, depending on where they dropped off of the host fish.

Survey Effort

Since the last recorded collections in the mid-1960s, numerous mussel surveys (1872–2005) have been done by mussel biologists from the TVA, Virginia Tech, U.S. Geological Survey, and others in rivers historically containing the species. Biologists conducting those surveys have not reported live or freshly dead individuals of the yellow blossom.

Time Since Last Detection

This species was last collected live from Citico Creek in 1957, and the Little Tennessee River in the 1966 (Bogan and Parmalee, 1983, p. 23), and archeological shell specimens were collected from the Tennessee and Cumberland Rivers between 1976 and 1979 (Parmalee et al. 1980, entire).

III. Analysis

Habitat within the historical range of the yellow blossom has been significantly altered by water impoundments, siltation, and pollution. The last known collection of the species was over 50 years ago. Mussel experts conclude that the species is likely to be extinct. Numerous surveys have been completed within the known range of the species over the years. Although other federally listed mussels have been found by these experts during these surveys, no live or freshly dead specimens of the yellow blossom have been found.

IV. Conclusion

We conclude the yellow blossom is extinct and, therefore, should be delisted. This conclusion is based on lack of detections during surveys conducted throughout the species' range since the yellow blossom was last sighted in the mid-1960s and on the significant habitat alteration that occurred within the range of the species, rendering most of the species' habitat unlikely to support the species.

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). Further, NEPA analyses are not applicable for the removal of any associated rules (*e.g.,* critical habitat) as the removal of those rules are required with the delisting of a species.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge

our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. The Seminole Tribe of Florida and the Miccousukee Tribe have expressed interest in the Bachman's warbler. We reached out to these Tribes by providing an advance notification prior to the publication of the September 30, 2021, proposed rule (86 FR 54298). We received no comments from any Tribes during the public comment period on the proposed rule.

References Cited

Lists of the references cited in in this document are available on the internet at *https://www.regulations.gov* in the dockets provided above under **ADDRESSES** and upon request from the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**.

Authors

The primary authors of this document are the staff members of the Branch of Delisting and Foreign Species, Ecological Services Program, as well as the staff of the Ecological Services Field Offices as specified under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

§ 17.11 [Amended]

■ 2. Amend § 17.11 in paragraph (h), the List of Endangered and Threatened Wildlife, by:
■ a. Under MAMMALS, removing the entry for ''Bat, little Mariana fruit'';
■ b. Under BIRDS, removing the entries for ''Akepa, Maui'', ''Akialoa, Kauai'', ''Creeper, Molokai'', ''Nukupuu, Kauai'', ''Nukupuu, Maui'', ''ʻOʻo, Kauai (honeyeater)'', ''Poʻouli (honeycreeper)'', ''Thrush, large Kauai'', ''Warbler (wood), Bachman's'', and ''White-eye, bridled'';
■ c. Under FISHES, removing the entries for ''Gambusia, San Marcos'' and ''Madtom, Scioto''; and
■ d. Under CLAMS, removing the entries for ''Acornshell, southern'' and ''Blossom, green''; both entries for ''Blossom, tubercled'', ''Blossom, turgid'', and ''Blossom, yellow''; and the entries for ''Combshell, upland'', ''Pigtoe, flat'', and ''Stirrupshell''.

§ 17.85 [Amended]

■ 3. Amend § 17.85 by:
■ a. In paragraph (a) introductory text:
■ i. In the heading, removing the word ''*Seventeen*'' and adding in its place the word ''*Fourteen*''; and
■ ii. In the table, removing the entries for ''tubercled blossom (pearlymussel)'', ''turgid blossom (pearlymussel)'', and ''yellow blossom (pearlymussel)'';
■ b. In paragraph (a)(1)(i), removing the number ''17'' and adding in its place the number ''14'';
■ c. In paragraph (a)(1)(ii), removing the number ''17'' and adding in its place the number ''14''; and
■ d. In paragraph (a)(2)(iii), by removing the number ''17'' and adding in its place the number ''14''.

■ 4. Amend § 17.95 by:
■ a. In paragraph (e), removing the entry for ''San Marcos Gambusia (*Gambusia georgei*)''; and
■ b. In paragraph (f), in the entry for ''Eleven Mobile River Basin Mussel Species: Southern acornshell (*Epioblasma othcaloogensis*), ovate clubshell (*Pleurobema perovatum*), southern clubshell (*Pleurobema decisum*), upland combshell (*Epioblasma metastriata*), triangular kidneyshell (*Ptychobranchus greenii*), Alabama moccasinshell (*Medionidus acutissimus*), Coosa moccasinshell (*Medionidus parvulus*), orangenacre mucket (*Hamiota perovalis*), dark pigtoe (*Pleurobema furvum*), southern pigtoe (*Pleurobema georgianum*), and finelined pocketbook (*Hamiota altilis*)'', revising the entry's heading, the first sentence of paragraph (1) introductory text, the introductory text of paragraph (2)(i), the table in paragraph (2)(ii), the introductory text of paragraph (2)(xiv), paragraph (2)(xiv)(B), the introductory text of paragraph (2)(xv), paragraph (2)(xv)(B), the introductory text of paragraph (2)(xx), paragraph (2)(xx)(B), the introductory text of paragraph (2)(xxi), paragraph (2)(xxi)(B), the introductory text of paragraph (2)(xxiii), paragraph (2)(xxiii)(B), the introductory text of paragraph (2)(xxvi), paragraph (2)(xxvi)(B), the introductory text of paragraph (2)(xxvii), paragraph (2)(xxvii)(B), the introductory text of paragraph (2)(xxviii), and paragraph (2)(xxviii)(B).

The revisions read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(f) *Clams and Snails.*

* * * * *

Nine Mobile River Basin Mussel Species: Ovate Clubshell (Pleurobema Perovatum), Southern Clubshell (Pleurobema Decisum), Triangular Kidneyshell (Ptychobranchus Greenii), Alabama Moccasinshell (Medionidus Acutissimus), Coosa Moccasinshell (Medionidus Parvulus), Orange-Nacre Mucket (Hamiota Perovalis), Dark Pigtoe (Pleurobema Furvum), Southern Pigtoe (Pleurobema Georgianum), and Fine-Lined Pocketbook (Hamiota Altilis)

(1) The primary constituent elements essential for the conservation of the ovate clubshell (*Pleurobema perovatum*), southern clubshell (*Pleurobema decisum*), triangular kidneyshell (*Ptychobranchus greenii*), Alabama moccasinshell (*Medionidus acutissimus*), Coosa moccasinshell (*Medionidus parvulus*), orange-nacre mucket (*Hamiota perovalis*), dark pigtoe (*Pleurobema furvum*), southern pigtoe (*Pleurobema georgianum*), and fine-lined pocketbook (*Hamiota altilis*) are those habitat components that support feeding, sheltering, reproduction, and physical features for maintaining the natural processes that support these habitat components. * * *

(2) * * *

(i) *Index map.* The index map showing critical habitat units in the States of Mississippi, Alabama, Georgia, and Tennessee for the nine Mobile River Basin mussel species follows:

* * * * *

(ii) * * *

TABLE 1 TO NINE MOBILE RIVER BASIN MUSSEL SPECIES PARAGRAPH (2)(ii)

Species	Critical habitat units	States
Ovate clubshell (*Pleurobema perovatum*)	Units 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 17, 18, 19, 21, 24, 25, 26.	AL, GA, MS, TN.

TABLE 1 TO NINE MOBILE RIVER BASIN MUSSEL SPECIES PARAGRAPH (2)(ii)—Continued

Species	Critical habitat units	States
Southern clubshell (*Pleurobema decisum*)	Units 1, 2, 3, 4, 5, 6, 7, 8, 9, 13, 14, 15, 17, 18, 19, 21, 24, 25, 26.	AL, GA, MS, TN.
Triangular kidneyshell (*Ptychobranchus greenii*)	Units 10, 11, 12, 13, 18, 19, 20, 21, 22, 23, 24, 25, 26	AL, GA, TN.
Alabama moccasinshell (*Medionidus acutissimus*)	Units 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 25, 26	AL, GA, MS, TN.
Coosa moccasinshell (*Medionidus parvulus*)	Units 18, 19, 20, 21, 22, 23, 24, 25, 26	AL, GA, TN.
Orange-nacre mucket (*Hamiota perovalis*)	Units 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15	AL, MS.
Dark pigtoe (*Pleurobema furvum*)	Units 10, 11, 12	AL.
Southern pigtoe (*Pleurobema georgianum*)	Units 18, 19, 20, 21, 22, 23, 24, 25, 26	AL, GA, TN.
Fine-lined pocketbook (*Hamiota altilis*)	Units 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26	AL, GA, TN.

* * * * *

(xiv) *Unit 12.* Locust Fork and Little Warrior Rivers, Jefferson, Blount Counties, Alabama. This is a critical habitat unit for the ovate clubshell, triangular kidneyshell, Alabama moccasinshell, orange-nacre mucket, and dark pigtoe.

* * * * *

(B) Map of Unit 12 follows:

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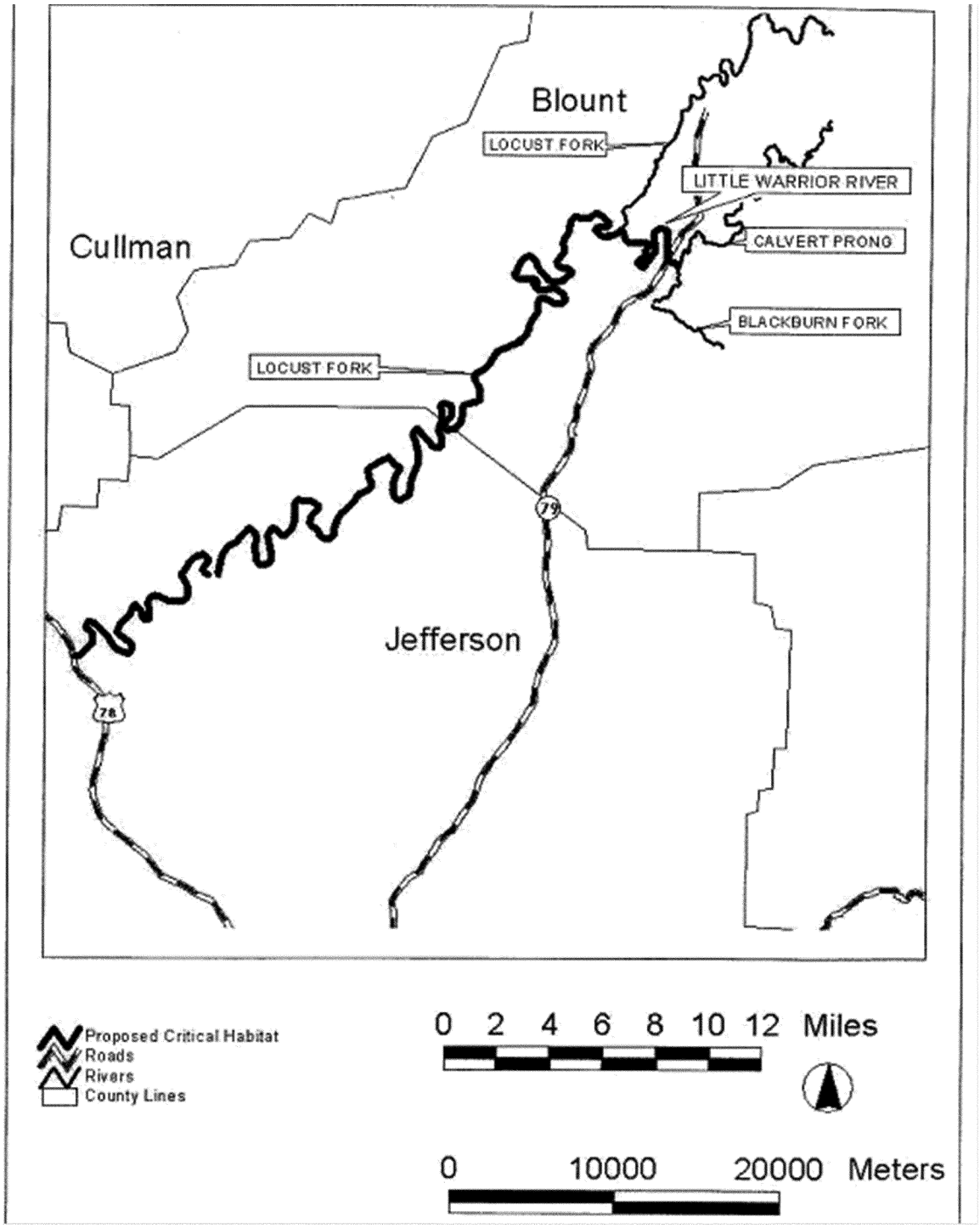
Figure 14 to Nine Mobile River Basin Mussel Species Paragraph (2)(xiv)(B)

Unit 12: Ovate Clubshell, Triangular Kidneyshell, Alabama Moccasinshell, Orange-Nacre Mucket, Dark Pigtoe



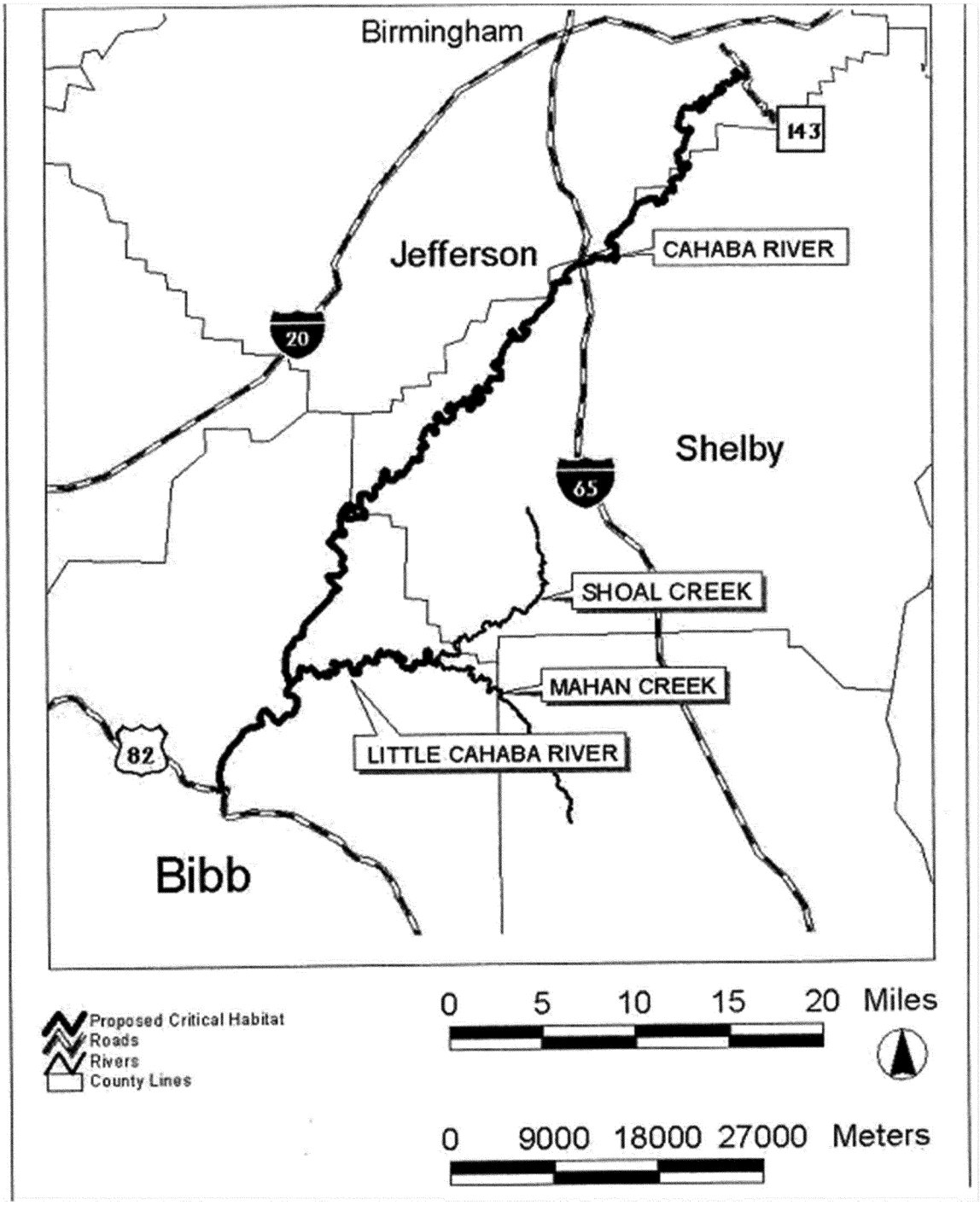
(xv) *Unit 13.* Cahaba River and Little Cahaba River, Jefferson, Shelby, Bibb Counties, Alabama. This is a critical habitat unit for the ovate clubshell, southern clubshell, triangular kidneyshell, Alabama moccasinshell, orange-nacre mucket, and fine-lined pocketbook.

* * * * *

(B) Map of Unit 13 follows:

Figure 15 to Nine Mobile River Basin Mussel Species Paragraph (2)(xv)(B)

Unit 13: Ovate Clubshell, Southern Clubshell, Triangular Kidneyshell, Alabama Moccasinshell, Orange-Nacre Mucket, Fine-Lined Pocketbook



* * * * *

(xx) *Unit 18.* Coosa River (Old River Channel) and Terrapin Creek, Cherokee, Calhoun, Cleburne Counties, Alabama. This is a critical habitat unit for the ovate clubshell, southern clubshell, triangular kidneyshell, Coosa

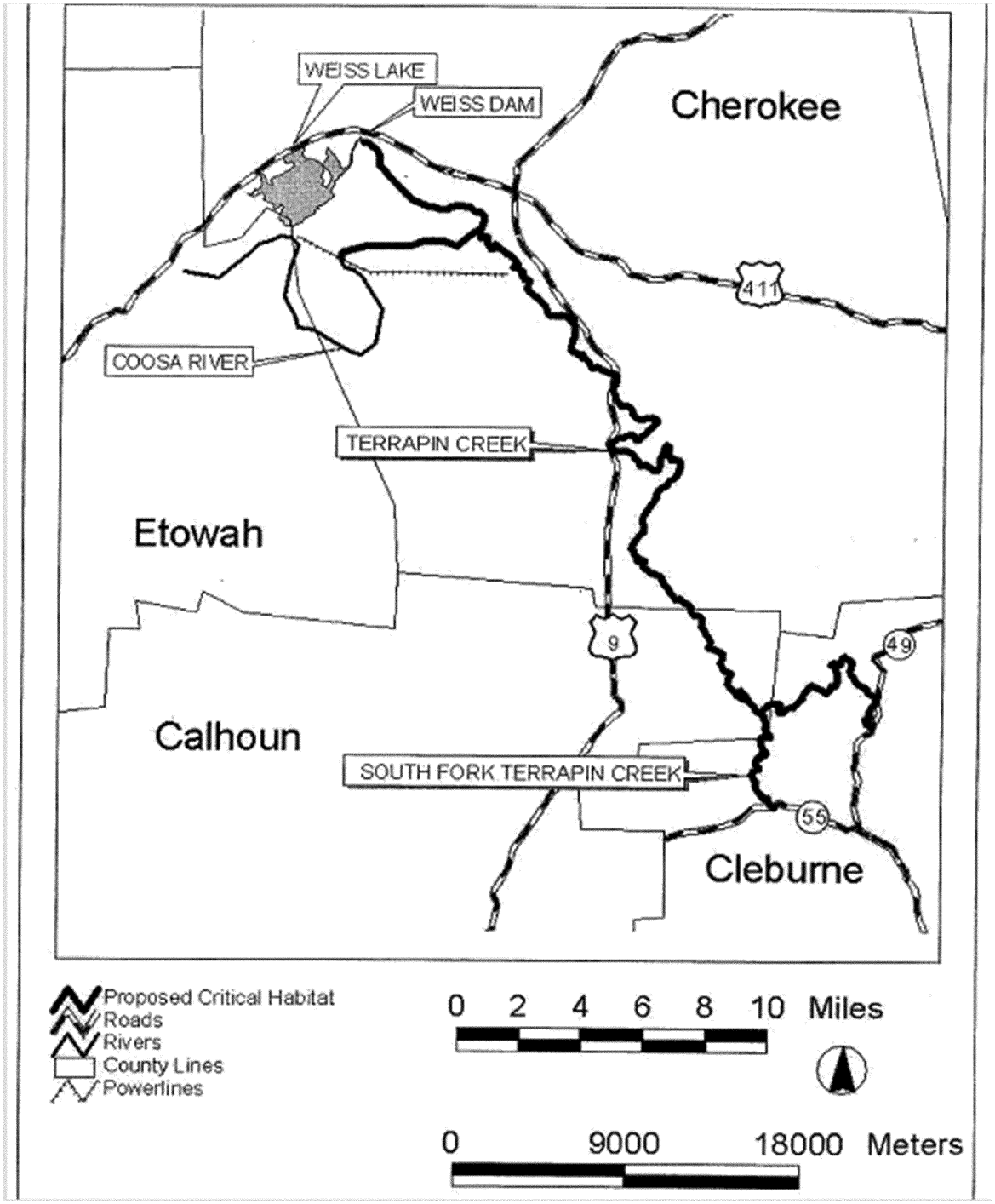
moccasinshell, southern pigtoe, and fine-lined pocketbook.

* * * * *

(B) Map of Unit 18 follows:

Figure 20 to Nine Mobile River Basin Mussel Species Paragraph (2)(xx)(B)

Unit 18: Ovate Clubshell, Southern Clubshell, Triangular Kidneyshell, Coosa Moccasinshell, Southern Pigtoe, Fine-Lined Pocketbook



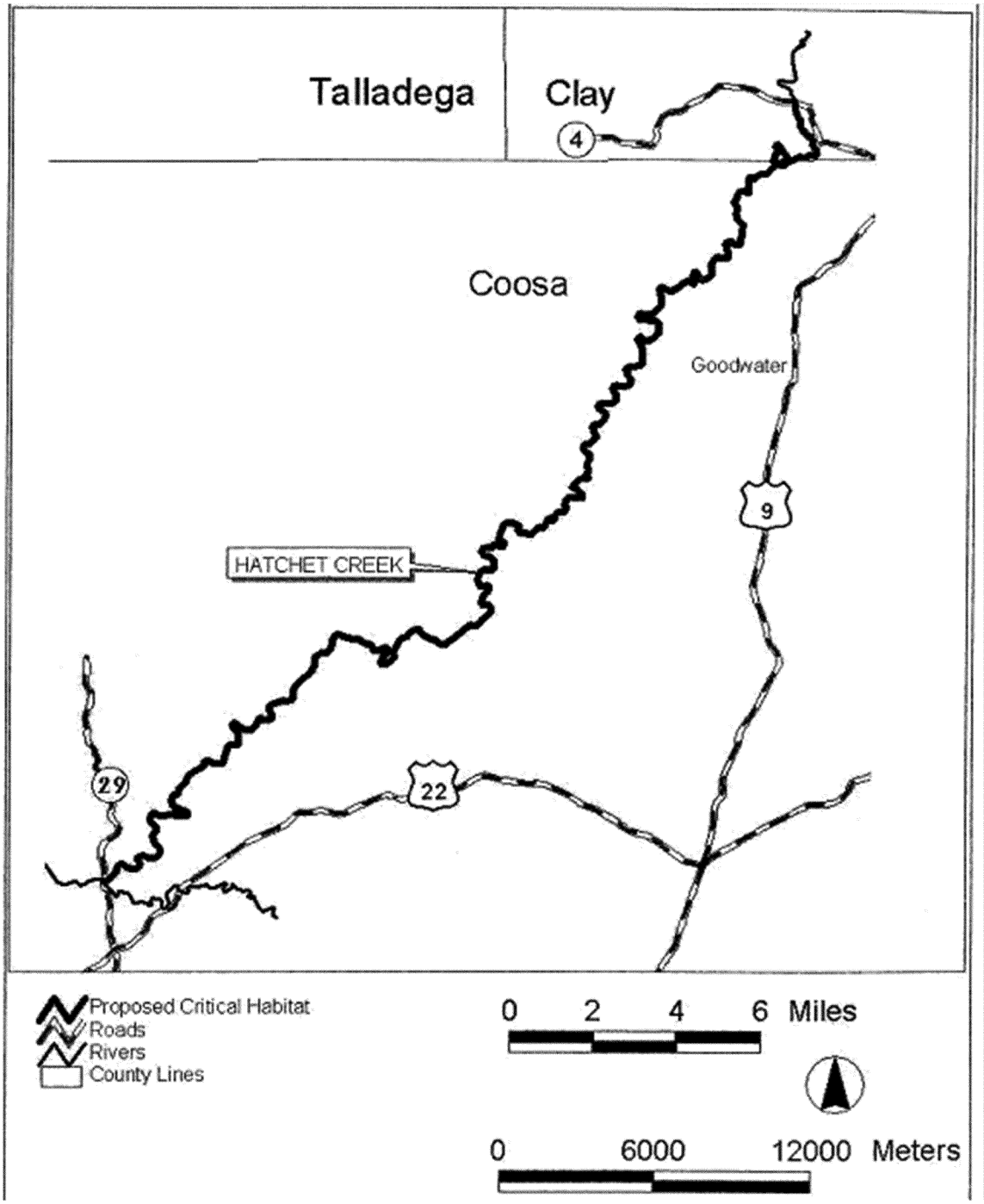
(xxi) *Unit 19.* Hatchet Creek, Coosa, Clay Counties, Alabama. This is a critical habitat unit for the ovate clubshell, southern clubshell, triangular kidneyshell, Coosa moccasinshell, southern pigtoe, and fine-lined pocketbook.

* * * * *

(B) Map of Unit 19 follows:

Figure 21 to Nine Mobile River Basin Mussel Species Paragraph (2)(xxi)(B)

Unit 19: Ovate Clubshell, Southern Clubshell, Triangular Kidneyshell, Coosa Moccasinshell, Southern Pigtoe, Fine-Lined Pocketbook



* * * * *

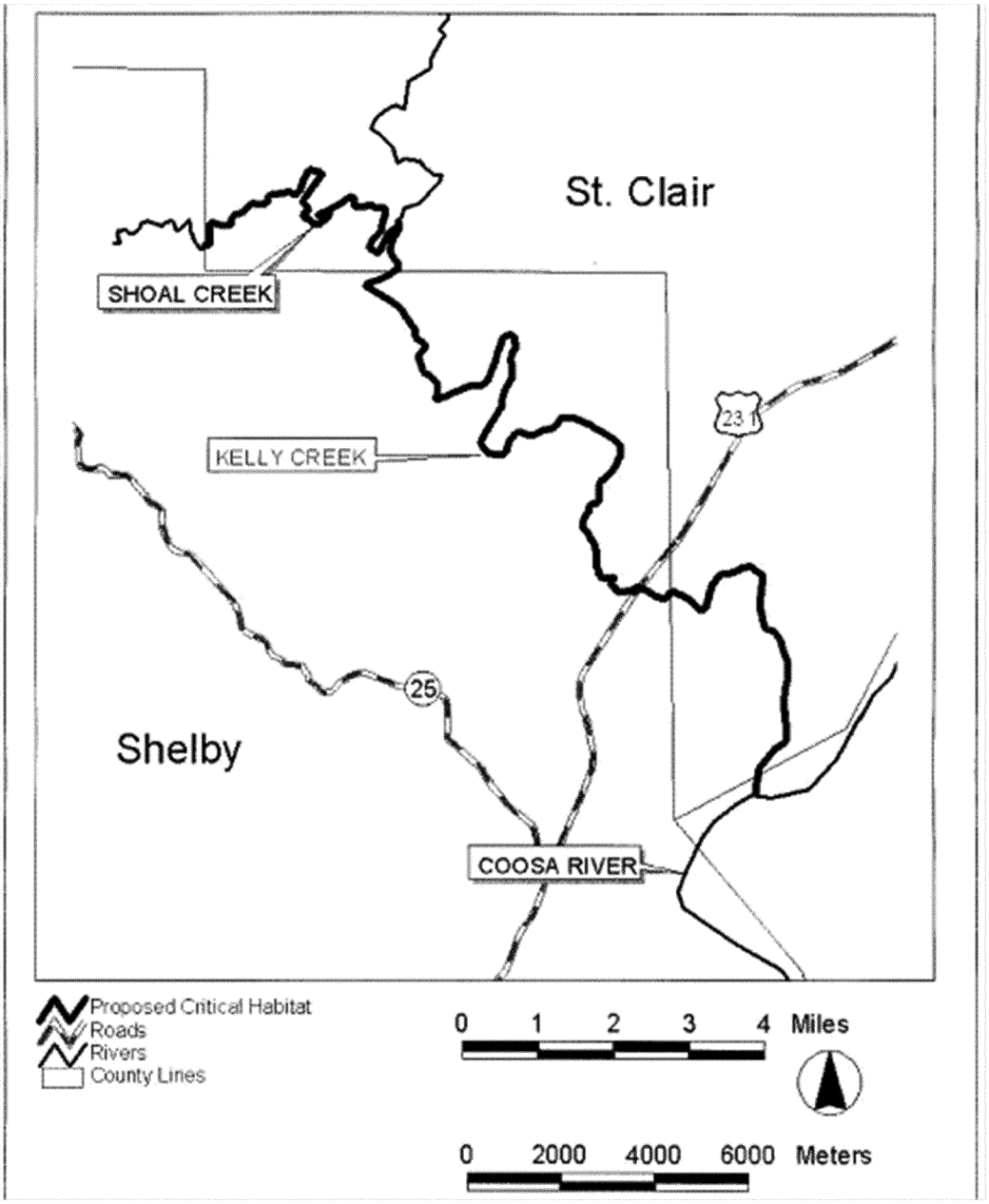
(xxiii) *Unit 21.* Kelly Creek and Shoal Creek, Shelby, St. Clair Counties, Alabama. This is a critical habitat unit for the ovate clubshell, southern clubshell, triangular kidneyshell, Coosa moccasinshell, southern pigtoe, and fine-lined pocketbook.

* * * * *

(B) Map of Unit 21 follows:

Figure 23 to Nine Mobile River Basin Mussel Species Paragraph (2)(xxiii)(B)

Unit 21: Ovate Clubshell, Southern Clubshell, Triangular Kidneyshell, Coosa Moccasinshell, Southern Pigtoe, Fine-Lined Pocketbook



* * * * *

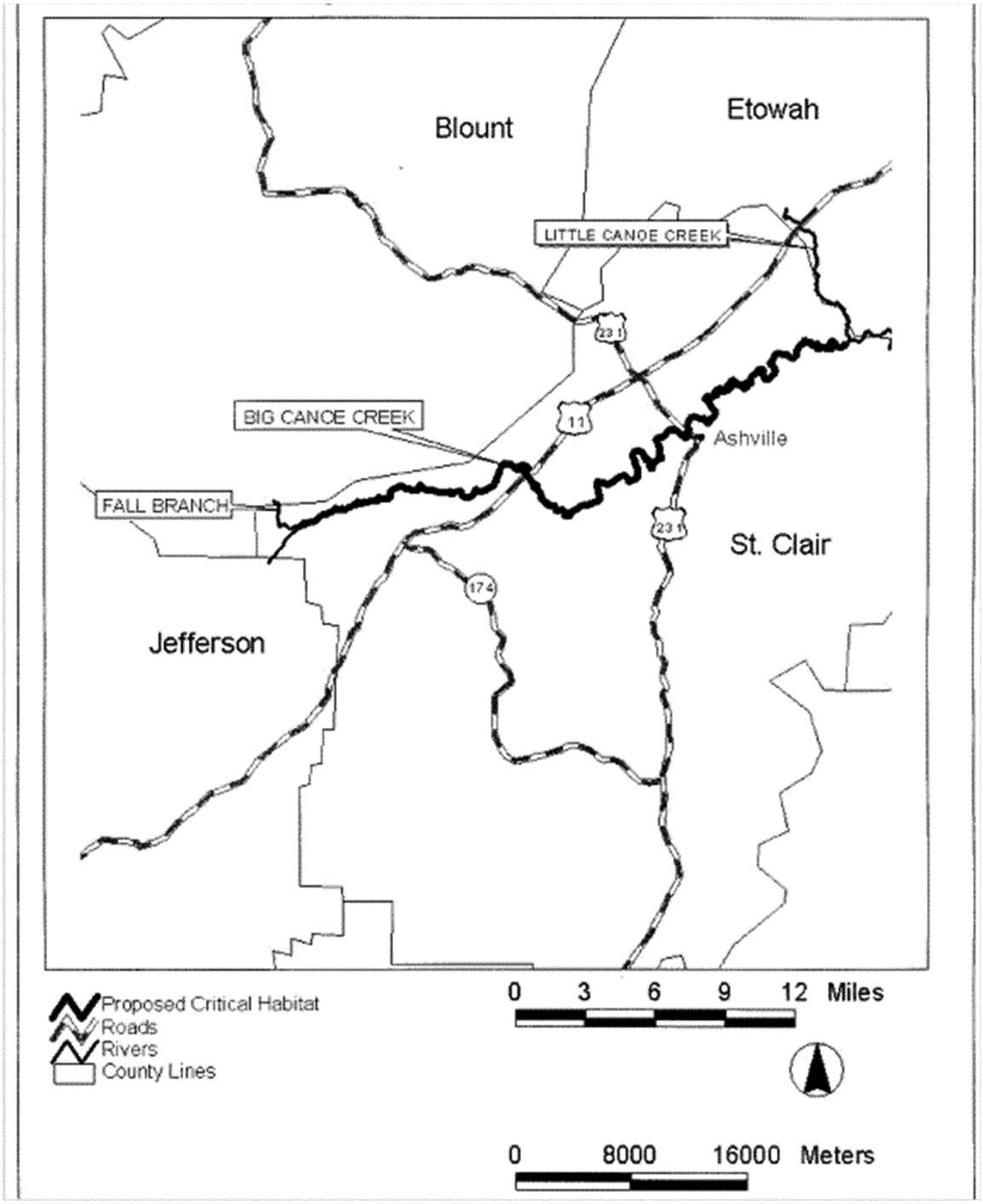
(xxvi) *Unit 24.* Big Canoe Creek, St. Clair County, Alabama. This is a critical habitat unit for the ovate clubshell, southern clubshell, triangular kidneyshell, Coosa moccasinshell, southern pigtoe, and fine-lined pocketbook.

* * * * *

(B) Map of Unit 24 follows:

Figure 26 to Nine Mobile River Basin Mussel Species Paragraph (2)(xxvi)(B)

Unit 24: Ovate Clubshell, Southern Clubshell, Triangular Kidneyshell, Coosa Moccasinshell, Southern Pigtoe, Fine-Lined Pocketbook



(xxvii) *Unit 25.* Oostanaula, Coosawattee, and Conasauga Rivers, and Holly Creek, Floyd, Gordon, Whitfield, Murray Counties, Georgia; Bradley, Polk Counties, Tennessee. This is a critical habitat unit for the ovate clubshell, southern clubshell, triangular kidneyshell, Alabama moccasinshell,

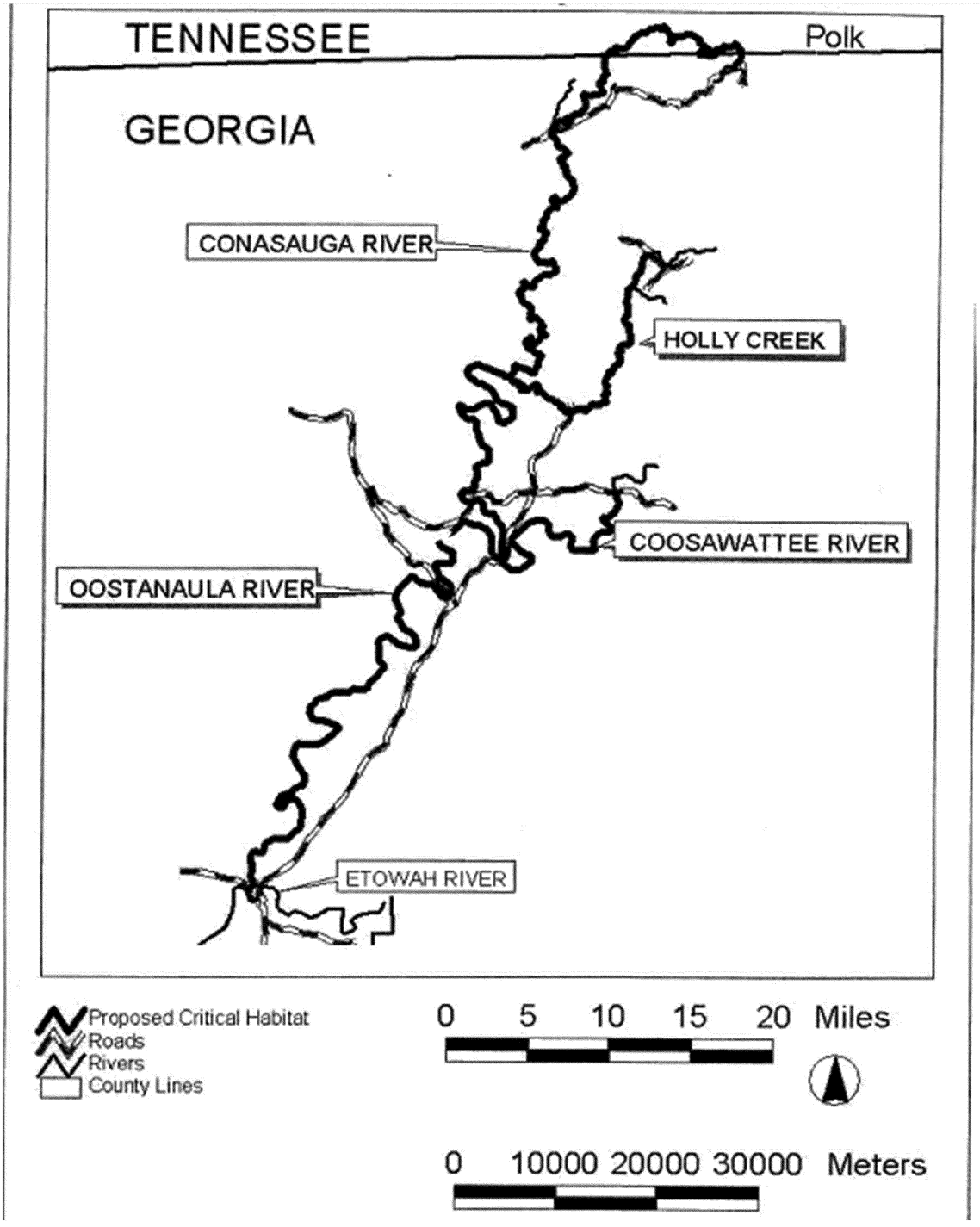
Coosa moccasinshell, southern pigtoe, and fine-lined pocketbook.

* * * * *

(B) Map of Unit 25 follows:

Figure 27 to Nine Mobile River Basin Mussel Species Paragraph (2)(xxvii)(B)

Unit 25: Ovate Clubshell, Southern Clubshell, Triangular Kidneyshell, Alabama Moccasinshell, Coosa Moccasinshell, Southern Pigtoe, Fine-Lined Pocketbook



(xxviii) *Unit 26.* Lower Coosa River, Elmore County, Alabama. This is a critical habitat unit for the ovate clubshell, southern clubshell, triangular kidneyshell, Alabama moccasinshell,

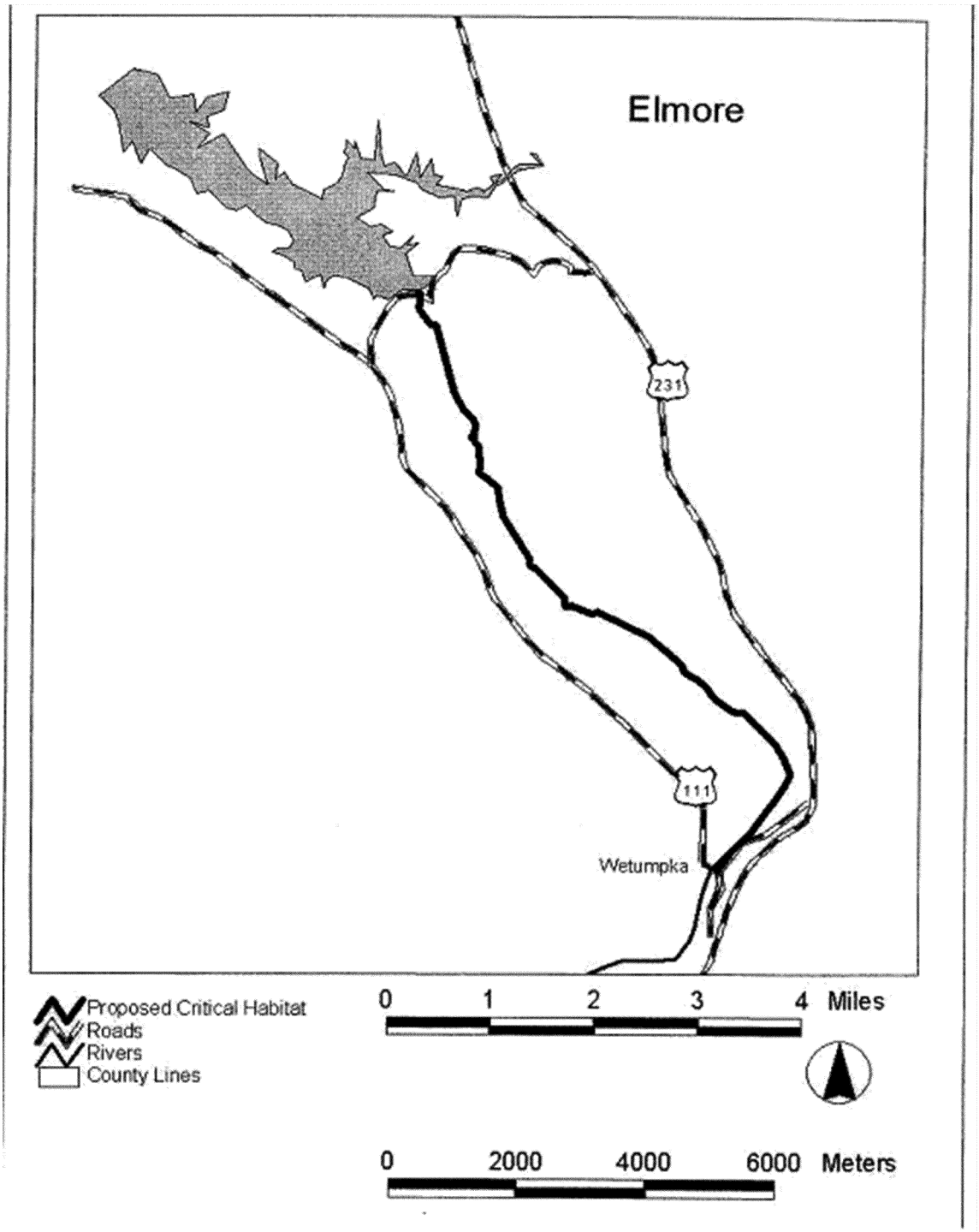
Coosa moccasinshell, southern pigtoe, and fine-lined pocketbook.

* * * * *

(B) Map of Unit 26 follows:

Figure 28 to Nine Mobile River Basin Mussel Species Paragraph (2)(xxviii)(B)

Unit 26: Ovate Clubshell, Southern Clubshell, Triangular Kidneyshell, Alabama Moccasinshell, Coosa Moccasinshell, Southern Pigtoe, Fine-Lined Pocketbook



* * * * *

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–22377 Filed 10–16–23; 8:45 am]

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FEDERAL REGISTER

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Part III

Securities and Exchange Commission

Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on the Auditor's Use of Confirmation, and Other Amendments to Related PCAOB Standards; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98689; File No. PCAOB–2023–02]

Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on the Auditor's Use of Confirmation, and Other Amendments to Related PCAOB Standards

October 5, 2023.

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the ''Act''), notice is hereby given that on October 4, 2023, the Public Company Accounting Oversight Board (the ''Board'' or ''PCAOB'') filed with the Securities and Exchange Commission (the ''Commission'' or ''SEC'') the proposed rules described in Items I and II below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rules from interested persons.

I. Board's Statement of the Terms of Substance of the Proposed Rules

On September 28, 2023, the Board adopted amendments to auditing standards for the auditor's use of confirmation, and amendments to related PCAOB standards (collectively, the ''proposed rules''), including the retitling and replacement of an existing standard with a new standard. The text of the proposed rules appears in Exhibit A to the SEC Filing Form 19b–4 and is available on the Board's website at *https://pcaobus.org/about/rules-rulemaking/rulemaking-dockets/docket-028-proposed-auditing-standard-related-to-confirmation* and at the Commission's Public Reference Room.

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rules and discussed comments it received on the proposed rules. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements. In addition, the Board is requesting that the Commission approve the proposed rules, pursuant to Section 103(a)(3)(C) of the Act, for application to audits of emerging growth companies (''EGCs''), as that term is defined in Section 3(a)(80) of the Securities Exchange Act of 1934 (''Exchange Act''). The Board's request is set forth in section D.

A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

(a) Purpose

Summary

The Board is replacing AS 2310, *The Confirmation Process,* in its entirety with a new standard, AS 2310, *The Auditor's Use of Confirmation* (''new standard'') to strengthen and modernize the requirements for the confirmation process. As described in the new standard, the confirmation process involves selecting one or more items to be confirmed, sending a confirmation request directly to a confirming party (*e.g.,* a financial institution), evaluating the information received, and addressing nonresponses and incomplete responses to obtain audit evidence about one or more financial statement assertions. If properly designed and executed by an auditor, the confirmation process may provide important evidence that the auditor obtains as part of an audit of a company's financial statements.

Why the Board Is Adopting These Changes Now

AS 2310 is an important standard for audit quality and investor protection, as the audit confirmation process touches nearly every audit. The standard was initially written over 30 years ago and has had minimal amendments since its adoption by the PCAOB in 2003.

The Board adopted the new standard after substantial outreach, including several rounds of public comment. The PCAOB previously considered updating AS 2310 by issuing a concept release in 2009 and a proposal in 2010 for a new auditing standard that would supersede AS 2310. While the PCAOB did not amend or replace AS 2310 at that time, subsequent developments—including the increasing use of electronic communications and third-party intermediaries in the confirmation process—led the Board to conclude that enhancements to AS 2310 and modifications to the approach proposed in 2010 could improve the quality of audit evidence obtained by auditors. In addition, the Board has observed continued inspection findings related to auditors' use of confirmation, as well as enforcement actions involving failures to adhere to requirements in the existing auditing standard regarding confirmation, such as the requirement for the auditor to maintain control over the confirmation process.

Accordingly, having considered these developments and input from commenters, the Board revisited the previously proposed changes and issued a new proposed standard to replace AS 2310, along with conforming amendments to other PCAOB auditing standards, in December 2022. Commenters generally supported the Board's objective of improving the confirmation process, and suggested areas to further improve the new standard, modify proposed requirements that would not likely improve audit quality, and clarify the application of the new standard. In adopting the new standard and related amendments, the Board has taken into account all of these comments, as well as observations from PCAOB oversight activities.

Key Provisions of the New Standard

The new standard and related amendments are intended to enhance the PCAOB's requirements on the use of confirmation by describing principles-based requirements that apply to all methods of confirmation, including paper-based and electronic means of communications. In addition, the new standard is more expressly integrated with the PCAOB's risk assessment standards by incorporating certain risk-based considerations and emphasizing the auditor's responsibilities for obtaining relevant and reliable audit evidence through the confirmation process. Among other things, the new standard:

- Includes a new requirement regarding confirming cash and cash equivalents held by third parties (''cash''), or otherwise obtaining relevant and reliable audit evidence by directly accessing information maintained by a knowledgeable external source;
- Carries forward the existing requirement regarding confirming accounts receivable, while addressing situations where it would not be feasible for the auditor to perform confirmation procedures or obtain relevant and reliable audit evidence for accounts receivable by directly accessing information maintained by a knowledgeable external source;
- States that the use of negative confirmation requests alone does not provide sufficient appropriate audit evidence (and includes examples of situations where the auditor may use negative confirmation requests to supplement other substantive audit procedures);
- Emphasizes the auditor's responsibility to maintain control over the confirmation process and provides that the auditor is responsible for selecting the items to be confirmed,

sending confirmation requests, and receiving confirmation responses; and

• Identifies situations in which alternative procedures should be performed by the auditor (and includes examples of such alternative procedures that may provide relevant and reliable audit evidence for a selected item).

(b) Statutory Basis

The statutory basis for the proposed rules is Title I of the Act.

B. Board's Statement on Burden on Competition

Not applicable. The Board's consideration of the economic impacts of the proposed rules is discussed in section D below.

C. Board's Statement on Comments on the Proposed Rules Received From Members, Participants or Others

The Board released the proposed rules for public comment in PCAOB Release No. 2022–009 (Dec. 20, 2022) (''2022 Proposal''). The Board previously issued a concept release for public comment in PCAOB Release No. 2009–002 (Apr. 14, 2009) (''2009 Concept Release'') and a proposed auditing standard related to confirmation and related amendments to PCAOB standards in PCAOB Release No. 2010–003 (July 13, 2010) (''2010 Proposal''). The Board received 98 written comment letters relating to the 2022 Proposal, the 2009 Concept Release, and the 2010 Proposal. The Board has carefully considered all comments received. The Board's response to the comments it received and the changes made to the rules in response to the comments received are discussed below.

Background

Information obtained by the auditor directly from knowledgeable external sources, including through confirmation, can be an important source of evidence obtained as part of an audit of a company's financial statements.[1] Confirmation has long been used by auditors. For example, one early auditing treatise noted the importance of confirmation for cash deposits, accounts receivable, and demand notes.[2] In addition, confirmation of accounts receivable has been a required audit procedure in the United States since 1939, when the American Institute of Accountants[3] adopted Statement on Auditing Procedure No. 1 (''SAP No. 1'') as a direct response to the *McKesson & Robbins* fraud case, which involved fraudulently reported inventories and accounts receivable that the independent auditors failed to detect after performing other procedures that did not involve confirmation.[4]

SAP No. 1 required confirmation of accounts receivable by direct communication with customers in all independent audits of financial statements, subject to the auditor's ability to overcome the presumption to confirm accounts receivable for certain reasons. Following the adoption of SAP No. 1, the accounting profession also adopted a requirement in 1942, which remained in effect until the early 1970s, that auditors should disclose in the auditor's report when confirmation of accounts receivable was not performed. The AICPA's subsequent revisions to its auditing standards included the promulgation of AU sec. 330, *The Confirmation Process,* which was adopted in 1991 and took effect in 1992. The PCAOB adopted AU sec. 330 (now AS 2310) as an interim standard in 2003.[5]

The amendments to the standards for the auditor's use of confirmation are intended to improve audit quality through principles-based requirements that apply to all methods of confirmation and are more expressly integrated with the Board's risk assessment standards. These enhancements should also lead to improvements in practice, commensurate with the associated risk, among audit firms of all sizes. The expected increase in audit quality should also enhance the credibility of information provided in a company's financial statements.

Rulemaking History

The final amendments to the auditing standards reflect public comments on a concept release and two proposals. In April 2009, the PCAOB issued a concept release seeking public comment on the potential direction of a standard-setting project that could result in amendments to the PCAOB's existing standard on the confirmation process or a new auditing standard that would supersede the existing standard.[6] The 2009 Concept Release discussed existing requirements and posed questions about potential amendments to those requirements.

In July 2010, the PCAOB proposed an auditing standard that, if adopted, would have superseded the existing confirmation standard.[7] The 2010 Proposal was informed by comments on the 2009 Concept Release and was intended to strengthen the existing standard by, among other things, expanding certain requirements and introducing new requirements. In general, commenters on the 2010 Proposal supported updating the existing standard to address relevant developments in audit practice, including greater use of emailed confirmation requests and responses and the involvement of third-party intermediaries. At the same time, some commenters asserted that the proposed requirements in the 2010 Proposal were unduly prescriptive (*i.e.,* included too many presumptively mandatory requirements) and would result in a significant increase in the volume of confirmation requests without a corresponding increase in the quality of audit evidence obtained by the auditor. The PCAOB did not adopt the 2010 Proposal.

In December 2022, the Board issued a proposed auditing standard to improve the quality of audits when confirmation is used by the auditor and to reflect changes in the means of communication and in business practice since the standard was originally issued.[8] The 2022 Proposal was informed by comments on the 2009 Concept Release and 2010 Proposal and specified the auditor's responsibilities regarding the confirmation process. The Board received 46 comment letters on the 2022 Proposal from commenters across a range of affiliations. Those comments

[1] *See, e.g.,* paragraph 08 of AS 1105, *Audit Evidence* (providing that, in general, ''[e]vidence obtained from a knowledgeable source that is independent of the company is more reliable than evidence obtained only from internal company sources'').

[2] Robert H. Montgomery, *Auditing Theory and Practice* 91 (confirmation of cash deposits), 263 (confirmation of accounts receivable), and 353 (confirmation of demand notes) (1912).

[3] The American Institute of Accountants was the predecessor to the American Institute of CPAs (''AICPA'').

[4] *See In the Matter of McKesson & Robbins, Inc.,* SEC Rel. No. 34–2707 (Dec. 5, 1940).

[5] Shortly after the Board's inception, the Board adopted the existing standards of the AICPA, as in existence on Apr. 16, 2003, as the Board's interim auditing standards. *See Establishment of Interim Professional Auditing Standards,* PCAOB Rel. No. 2003–006 (Apr. 18, 2003). AU sec. 330 was one of these auditing standards. As of Dec. 31, 2016, the PCAOB reorganized its auditing standards using a topical structure and a single, integrated number system, at which time AU sec. 330 was designated AS 2310. *See Reorganization of PCAOB Auditing Standards and Related Amendments to PCAOB Standards and Rules,* PCAOB Rel. No. 2015–002 (Mar. 31, 2015).

[6] *Concept Release on Possible Revisions to the PCAOB's Standard on Audit Confirmations,* PCAOB Rel. No. 2009–002 (Apr. 14, 2009).

[7] *Proposed Auditing Standard Related to Confirmation and Related Amendments to PCAOB Standards,* PCAOB Rel. No. 2010–003 (July 13, 2010).

[8] *Proposed Auditing Standard—The Auditor's Use of Confirmation, and Other Proposed Amendments to PCAOB Standards,* PCAOB Rel. No. 2022–009 (Dec. 20, 2022). In this exhibit, the term ''proposed standard'' refers to the proposed auditing standard relating to the auditor's use of confirmation as described in the 2022 Proposal.

are discussed throughout this release. Commenters on the 2022 Proposal generally expressed support for the project's objective and suggested ways to revise or clarify the proposed standard. The Board considered the comments on the 2022 Proposal, as well as on the 2009 Concept Release and the 2010 Proposal, in developing the final amendments.[9] The Board also considered observations from PCAOB oversight activities.

Existing Standard

This section discusses key provisions of the existing PCAOB auditing standard on the confirmation process.

In 2003, the PCAOB adopted the standard now known as AS 2310 (at that time, AU sec. 330), when it adopted the AICPA's standards then in existence. Existing AS 2310 indicates that confirmation is the process of obtaining and evaluating a direct communication from a third party in response to a request for information about a particular item affecting financial statement assertions.[10] For example, an auditor might request a company's customers to confirm balances owed at a certain date, or request confirmation of a company's accounts or loans payable to a bank at a certain date.

Key provisions of existing AS 2310 include the following:

- A presumption that the auditor will request confirmation of accounts receivable. The standard states that confirmation of accounts receivable is a generally accepted auditing procedure and provides the situations in which the auditor may overcome the presumption.
- Procedures for designing the confirmation request, including the requirement that the auditor direct the confirmation request to a third party who the auditor believes is knowledgeable about the information to be confirmed.
- Procedures relating to the use of both positive and negative confirmation requests. A positive confirmation request directs the recipient to send a response back to the auditor stating the recipient's agreement or disagreement with information stated in the request, or furnishing requested information. A negative confirmation request directs the recipient to respond back to the auditor only when the recipient disagrees with information in the auditor's request. The standard states that ''[n]egative confirmation requests may be used to reduce audit risk to an acceptable level when (a) the combined assessed level of inherent and control risk is low, (b) a large number of small balances is involved, and (c) the auditor has no reason to believe that the recipients of the requests are unlikely to give them consideration.'' [11] If negative confirmation requests are used, the auditor should consider performing other substantive procedures to supplement their use.[12]
- A requirement for the auditor to maintain control over confirmation requests and responses by establishing direct communication between the intended recipient and the auditor.
- Procedures to consider when the auditor does not receive a written confirmation response via return mail, including how the auditor should evaluate the reliability of oral and facsimile responses to written confirmation requests. The standard provides that, when confirmation responses are in other than a written format mailed to the auditor, additional evidence may be necessary to establish the validity of the respondent.
- A requirement that the auditor should perform alternative procedures when the auditor has not received a response to a positive confirmation request.
- Requirements for the auditor's evaluation of the results of confirmation procedures and any alternative procedures performed by the auditor. These provisions include the requirement that, if the combined evidence provided by confirmation, alternative procedures, and other procedures is not sufficient, the auditor should request additional confirmations or extend other tests, such as tests of details or analytical procedures.

Current Practice

This section discusses the Board's understanding of current practice based on, among other things, observations from oversight activities of the Board and SEC enforcement actions.

Overview of Current Practice

The audit confirmation process touches nearly every financial statement audit conducted under PCAOB auditing standards. This is due in part to the presumption in existing AS 2310 that the auditor will confirm accounts receivable, which include claims against customers that have arisen from the sale of goods or services in the normal course of business and a financial institution's loans, unless certain exemptions apply. In addition, audit methodologies of many larger audit firms affiliated with global networks recommend or require confirming cash accounts. In the past, the use of confirmation was a common practice for auditing a financial institution's customer deposits. In recent years, however, there has been an increased wariness about phishing attempts by unauthorized parties aimed at obtaining sensitive personal or financial information of customers. As a result, some customers might not understand or trust an -unsolicited confirmation request from an auditor and, indeed, many financial institutions and other companies now advise customers not to reply to unsolicited correspondence concerning their accounts or other customer relationships.[13]

Existing AS 2310 was written at a time when paper-based confirmation requests and responses were the prevailing means of communication. Since then, emailed confirmation requests and responses, and the use of technology-enabled confirmation tools, including the use of intermediaries to facilitate the confirmation process, have become commonplace. For example, numerous financial institutions in the United States, and an increasing number of international banks, mandate the use of an intermediary as part of the confirmation process and will not otherwise respond to an auditor's confirmation request.

As noted above, existing AS 2310 provides that the auditor should maintain control over the confirmation process. In practice, complying with this requirement involves the auditor directly sending the confirmation request to the confirming party via mail or email, without involving company personnel. The auditor's confirmation request generally specifies that any correspondence should be sent directly to the auditor's location (or email address) to minimize the risk of interference by company personnel. When an intermediary facilitates direct electronic communications between the auditor and the confirming party, the auditor is still required to maintain control over the confirmation process. Procedures performed by audit firms to address this requirement vary depending on facts and circumstances.

[9] The comment letters received on the 2009 Concept Release, 2010 Proposal, and 2022 Proposal are available in the docket for this rulemaking on the PCAOB's website (*https://pcaobus.org/Rulemaking/Pages/Docket028Comments.aspx*).

[10] Under PCAOB standards, financial statement assertions can be classified into the following categories: existence or occurrence, completeness, valuation or allocation, rights and obligations, and presentation and disclosure. *See, e.g.,* AS 1105.11.

[11] *See* AS 2310.20.

[12] *Id.*

[13] Situations that involve using audit procedures other than confirmation and situations where companies adopt the policy of responding to electronic confirmation requests from auditors only through an intermediary are discussed later in this exhibit.

Some auditors have used a report on controls at a service organization (''SOC report'') to evaluate the design and operating effectiveness of the intermediary's controls relevant to sending and receiving confirmations.

Under the existing standard, auditors can use positive confirmation requests and, provided certain conditions are met, negative confirmation requests. A positive confirmation request either asks the recipient to respond directly to the auditor about whether the recipient agrees with information that is stated in the request or asks the recipient to provide the requested information by filling in a blank form. In comparison, a negative confirmation request directs the recipient to respond only when the recipient disagrees with the information included in the request. In practice, negative confirmation requests have typically been used to obtain audit evidence related to the completeness of deposit liabilities and other accounts of a similar nature and, less frequently, to obtain evidence related to the existence of accounts receivable. In some cases, auditors use a combination of positive and negative confirmation requests.

Observations From Inspections and Enforcement Actions

This section discusses observations from PCAOB oversight activities and SEC enforcement actions, including (1) PCAOB inspections of registered public accounting firms (''firms'') and (2) enforcement actions relating to deficient confirmation procedures performed by the auditor. These observations have informed the Board's view that providing greater clarity as the Board strengthens the requirements could result in improved compliance by auditors.

Inspections. Over the past several years, PCAOB inspections indicated that some auditors did not fulfill their responsibilities under the existing standard when performing confirmation procedures. The shortcomings have been noted at large and small domestic firms, and at large firms with domestic and international practices. For example, some auditors did not: (1) consider performing procedures to verify the source of confirmation responses received electronically; (2) perform sufficient alternative procedures; (3) restrict the use of negative confirmation requests to situations where the risk of material misstatement was assessed as low; or (4) maintain appropriate control over the confirmation process, including instances where company personnel were involved in either sending or receiving confirmations.

The PCAOB has also continued to monitor developments relating to the use of confirmation through its other oversight and research activities. For example, in 2021, the PCAOB staff issued a Spotlight discussing, among other things, the use of technology in the confirmation process.[14] In addition, in 2022, the PCAOB staff issued a Spotlight that specifically discussed observations and reminders on the use of a service provider in the confirmation process.[15]

Enforcement actions. Over the years, there have been a number of enforcement actions by the PCAOB and the SEC alleging that auditors failed to comply with PCAOB standards related to the confirmation process. Enforcement actions have been brought against large and small firms, and against U.S. and non-U.S. firms.

For example, PCAOB enforcement cases have involved allegations that auditors failed to: (1) perform appropriate confirmation procedures to address a fraud risk; [16] (2) adequately respond to contradictory audit evidence obtained from confirmation procedures; [17] (3) perform appropriate confirmation procedures and alternative procedures for accounts receivable; [18] or (4) maintain proper control over the confirmation process.[19]

In several confirmation-related enforcement cases, the SEC alleged that the deficient confirmation procedures by the auditors involved companies that had engaged in widespread fraud, where properly performed confirmation procedures might have led to the detection of the fraudulent activity.[20] Further, in a number of proceedings, the SEC alleged that confirmation procedures were not properly designed [21] or, more frequently, that the auditors failed to adequately evaluate responses to confirmation requests and perform alternative or additional procedures in light of exceptions, nonresponses, or responses that should have raised issues as to their reliability or the existence of undisclosed related parties.[22] Several of these proceedings were brought in recent years, suggesting that problems persist in this area.

Reasons To Improve Auditing Standards

The amendments to PCAOB standards being adopted are intended to enhance audit quality by clarifying and strengthening the requirements for the auditor's use of confirmation. The final amendments are also more expressly integrated with the PCAOB's risk assessment standards by incorporating certain risk-based considerations and emphasizing the auditor's responsibilities for obtaining relevant and reliable audit evidence through the confirmation process. The Board believes that these improvements will enhance both audit quality and the credibility of the information provided in a company's financial statements.

Areas of Improvement

The Board has identified two important areas where improvements are warranted to existing standards, discussed below: (1) updating the standards to reflect developments in

[14] *See Spotlight: Data and Technology Research Project Update* (May 2021), available at *https://pcaobus.org/resources/staff-publications.*

[15] *See Spotlight: Observations and Reminders on the Use of a Service Provider in the Confirmation Process* (Mar. 2022), available at *https://pcaobus.org/resources/staff-publications.*

[16] *See, e.g., In the Matter of Marcum LLP,* PCAOB Rel. No. 105–2020–012 (Sept. 24, 2020); *In the Matter of Whitley Penn LLP,* PCAOB Rel. No. 105–2020–002 (Mar. 24, 2020); *In the Matter of PMB Helin Donovan, LLP,* PCAOB Rel. No. 105–2019–031 (Dec. 17, 2019); *In the Matter of Ronald R. Chadwick, P.C.,* PCAOB Rel. No. 105–2015–009 (Apr. 28, 2015).

[17] *See, e.g., In the Matter of Marcum LLP,* PCAOB Rel. No. 105–2020–012 (Sept. 24, 2020); *In the Matter of Ronald R. Chadwick, P.C.,* PCAOB Rel. No. 105–2015–009 (Apr. 28, 2015); *In the Matter of Price Waterhouse, Bangalore,* PCAOB Rel. No. 105–2011–002 (Apr. 5, 2011).

[18] *See, e.g., In the Matter of Whitley Penn LLP,* PCAOB Rel. No. 105–2020–002 (Mar. 24, 2020); *In the Matter of PMB Helin Donovan, LLP,* PCAOB Rel. No. 105–2019–031 (Dec. 17, 2019); *In the Matter of Wander Rodrigues Teles,* PCAOB Rel. No. 105–2017–007 (Mar. 20, 2017); *In the Matter of Ronald R. Chadwick, P.C.,* PCAOB Rel. No. 105–2015–009 (Apr. 28, 2015); *In the Matter of Price Waterhouse, Bangalore,* PCAOB Rel. No. 105–2011–002 (Apr. 5, 2011).

[19] *See, e.g., In the Matter of Marcum LLP,* PCAOB Rel. No. 105–2020–012 (Sept. 24, 2020); *In the Matter of Price Waterhouse, Bangalore,* PCAOB Rel. No. 105–2011–002 (Apr. 5, 2011).

[20] *See, e.g., In the Matter of CohnReznick LLP,* SEC Rel. No.34–95066 (June 8, 2022); *In the Matter of Ravindranathan Raghunathan, CPA,* SEC Rel. No. 34–93133 (Sept. 27, 2021); *In the Matter of Mancera, S.C.,* SEC Rel. No. 34–90699 (Dec. 17, 2020); *In the Matter of Schulman Lobel Zand Katzen Williams & Blackman, LLP A/K/A Schulman Lobel LLP,* SEC Rel. No. 34–88653 (Apr. 15, 2020); *In the Matter of William Joseph Kouser Jr., CPA,* SEC Rel. No. 34–80370 (Apr. 4, 2017).

[21] *See, e.g., In the Matter of RSM US LLP,* SEC Rel. No. 34–95948 (Sept. 30, 2022); *In the Matter of Ravindranathan Raghunathan, CPA,* SEC Rel. No. 34–93133 (Sept. 27, 2021*); In the Matter of Winter, Kloman, Moter & Repp, S.C.,* SEC Rel. No. 34–83168 (May 4, 2018); *In the Matter of Edward Richardson, Jr., CPA,* SEC Rel. No. 34–80918 (June 14, 2017).

[22] *See, e.g., In the Matter of Jason Jianxun Tang, CPA,* SEC Rel. No. 34–96347 (Nov. 17, 2022); *In the Matter of Steven Kirn, CPA,* SEC Rel. No. 34–95949 (Sept. 30, 2022); *In the Matter of Friedman LLP,* SEC Rel. No. 34–95887 (Sept. 23, 2022); *In the Matter of Mancera, S.C.,* SEC Rel. No. 34–90699 (Dec. 17, 2020); *In the Matter of Schulman Lobel Zand Katzen Williams & Blackman, LLP A/K/A Schulman Lobel LLP,* SEC Rel. No. 34–88653 (Apr. 15, 2020); *In the Matter of Anton & Chia, LLP,* SEC Rel. No. 34–87033 (Sept. 20, 2019); *In the Matter of Edward Richardson, Jr., CPA,* SEC Rel. No. 34–80918 (June 14, 2017); *In the Matter of William Joseph Kouser Jr., CPA,* SEC Rel. No. 34–80370 (Apr. 4, 2017).

practice and (2) clarifying the auditor's responsibilities to evaluate the reliability of evidence obtained through confirmation responses.

Updating the Standards To Reflect Developments in Practice

The new standard supports the auditor's use of electronic forms of communication between the auditor and the confirming party. Since the AICPA standard on the confirmation process adopted by the PCAOB took effect in 1992, there has been a significant change in the auditing environment and the means by which an auditor communicates with confirming parties. Emails and other forms of electronic communications between auditors and confirming parties have become ubiquitous, and third-party intermediaries now often facilitate the electronic transmission of confirmation requests and responses between auditors and confirming parties.

In addition, the Board believes its auditing standards should allow for continued innovation by auditors in the ways they obtain audit evidence. Traditionally, auditors have used confirmation in circumstances where reliable evidence about financial statement assertions could be obtained directly from a third party that transacts with the company (*e.g.,* to confirm the existence of cash or accounts receivable). Generally, audit evidence obtained directly from knowledgeable external sources, including through confirmation, has been viewed as more reliable than evidence obtained through other audit procedures available to the auditor,[23] especially where the auditor identified a risk of fraud, chose not to test controls, or determined that controls could not be relied on.[24]

The PCAOB staff's research indicates that some audit firms may have developed or may yet develop audit techniques that enable the auditor to obtain relevant and reliable audit evidence for the same assertions by performing substantive audit procedures that do not include confirmation, as discussed in more detail below. To reflect these developments, the new standard allows the performance of other procedures in lieu of confirmation for cash and accounts receivable in situations where the auditor can obtain relevant and reliable audit evidence by directly accessing information maintained by knowledgeable external sources. Further, the new standard acknowledges that, in certain situations, it may not be feasible for the auditor to obtain audit evidence for accounts receivable directly from a knowledgeable external source and provides that in those situations the auditor should obtain external information indirectly by performing other substantive procedures, including tests of details.

Clarifying the Auditor's Responsibilities To Evaluate the Reliability of Confirmation Responses

While information obtained through the confirmation process can be an important source of audit evidence, the confirmation process must be properly executed for the evidence obtained to be relevant and reliable. The enforcement actions discussed above and other recent high-profile financial reporting frauds have also called attention to the importance of well-executed confirmation procedures, including the confirmation of cash.[25] In addition, PCAOB oversight activities have identified instances in which auditors did not obtain sufficient appropriate audit evidence when using confirmation. Accordingly, the new standard includes a new requirement to confirm certain cash balances and clarifies the auditor's responsibilities to evaluate the reliability of evidence obtained through confirmation responses (and, when necessary, to obtain audit evidence through alternative procedures).

Comments on the Reasons for Standard Setting

Many commenters on the 2022 Proposal broadly expressed support for revisions to the Board's standard on the auditor's use of confirmation to reflect developments in practice since the AICPA standard on the confirmation process adopted by the PCAOB took effect in 1992. A number of commenters also agreed that the standard on the auditor's use of confirmation should be more closely aligned with the Board's risk assessment standards. In addition, some commenters stated that updates to the PCAOB's standard on the auditor's use of confirmation would be generally consistent with their prior recommendations to the Board that the Board modernize its interim auditing standards. Other commenters suggested that the Board should also engage in additional outreach with investors or that it consider other mechanisms to engage with stakeholders prior to the adoption of standards, such as roundtables and pre-implementation ''field testing'' of proposed standards.

In addition, several commenters expressed support for the proposition that the PCAOB's auditing standards should allow for continued innovation by auditors in the ways they obtain audit evidence. These commenters generally stated that standards should be written to evolve with future technologies, including new methods of confirmation that may arise from technological changes in auditing in the future. A few commenters stated that the 2022 Proposal provided flexibility to respond to the current use of technology in the audit process, or left enough room for judgment-based application for further advances in technology. In comparison, some commenters stated that the proposed standard was not sufficiently forward-looking. Several commenters cautioned against more explicitly addressing the use of technology (*i.e.,* by adding prescriptive requirements), noting that doing so might not allow the standard to age effectively with time and innovation.

Several commenters broadly expressed support for the Board's goal, as described in the 2022 Proposal, of improving the quality of audit evidence obtained by auditors when using confirmation. One of these commenters stated that it was critical that confirmation requests are properly designed and that confirmation responses are appropriately evaluated, especially when there are confirmation exceptions or concerns about their reliability. In addition, other commenters generally expressed

[23] The confirmation process involves obtaining audit evidence from a confirming party. Under PCAOB standards, in general, evidence obtained from a knowledgeable source that is independent from the company is more reliable than evidence obtained only from internal company sources. *See, e.g.,* AS 1105.08.

[24] *See, e.g.,* Staff Audit Practice Alert No. 8, *Audit Risks in Certain Emerging Markets* (Oct. 3, 2011) (''SAPA No. 8'') at 11 (stating that, when an auditor has identified fraud risks relating to a company's bank accounts or amounts due from customers, ''it is important for the auditor to confirm amounts included in the company's financial statements directly with a knowledgeable individual from the bank or customer who is objective and free from bias with respect to the audited entity rather than rely solely on information provided by the company's management''). The requirements of the new standard are consistent with the guidance in SAPA No. 8, which auditors should continue to consider when using confirmations to address fraud risks in emerging markets.

[25] *See, e.g., In the Matter of Mancera, S.C.,* SEC Rel. No. 34–90699 (Dec. 17, 2020) (failure by auditors to properly evaluate confirmation responses to requests for information on cash balances of a Mexican homebuilder subsequently found to have engaged in a ''multi-billion dollar financial fraud''). *See also* Olaf Storbeck, Tabby Kinder, and Stefania Palma, *EY failed to check Wirecard bank statements for 3 years,* Financial Times (June 26, 2020) (potential failure by auditors to confirm cash balances purportedly held by Wirecard AG, a German company whose securities were not registered with the SEC, directly with a Singapore-based bank).

support for the proposed requirements and stated they would lead to improvements in audit quality. A number of commenters, primarily firms and firm-related groups, asserted that certain requirements in the 2022 Proposal were unduly prescriptive and that the final standard should be more principles-based and risk-based to allow for more auditor judgment. In comparison, an investor-related group suggested that the Board remind auditors that, in exercising professional judgment, their judgments must be reasonable, careful, documented, and otherwise in compliance with applicable professional requirements.

In adopting the new standard, the Board has considered these comments on the 2022 Proposal, as well as the comments received on the 2010 Proposal and the 2009 Concept Release. Based on the information available to the Board—including the current regulatory baseline, observations from our oversight activities, academic literature, and comments—the Board believes that investors will benefit from strengthened and clarified auditing standards in this area. To the extent that commenters provided comments or expressed concerns about specific aspects of the proposed revisions to the Board's existing standard on the auditor's use of confirmation, the Board's consideration of these comments is discussed further below and elsewhere in this exhibit. While the Board does not expect that the new standard will eliminate inspection deficiencies observed in practice, it is intended to clarify the auditor's responsibilities and align the requirements for the use of confirmation more closely with the PCAOB's risk assessment standards.

The new standard also reflects several changes that were made after the Board's consideration of comments received about the potential impact of the proposed new standard on auditors, issuers, and intermediaries. In addition, some commenters called for a broader alignment of PCAOB standards with standards issued by other standard setters, namely the International Auditing and Assurance Standards Board (''IAASB'') and the AICPA's Auditing Standards Board (''ASB''). A few commenters stated that PCAOB standards should be harmonized with IAASB standards, in the interest of global comparability, and, in the view of one commenter, with ASB standards. A few commenters stated that the Board should provide robust and detailed explanations of differences between PCAOB standards and the standards of other standard setters. One commenter indicated that the dual standard-setting structure in the United States (*i.e.,* the existence of both PCAOB and ASB standards) creates issues that could erode audit quality.

The Board carefully considered the approaches of other standard setters when developing the 2022 Proposal, and the new standard reflects the approach that the Board believes best protects investors and furthers the public interest. As a result, certain differences will continue to exist between the Board's new standard and those of other standard setters, including a number of provisions that the Board believes are appropriate and consistent with its statutory mandate to protect the interests of investors and further the public interest.

Discussion of Final Rules

Overview of New Standard

The new standard replaces existing AS 2310 in its entirety. The provisions of the new standard the Board has adopted are intended to strengthen existing requirements for the auditor's use of confirmation. Key aspects of the new standard:

- *Include principles-based requirements that are designed to apply to all methods of confirmation.* The new standard is designed to enhance requirements that apply to longstanding methods, such as the use of paper-based confirmation requests and responses sent via regular mail; methods that involve electronic means of communications, such as the use of email or an intermediary to facilitate direct electronic transmission of confirmation requests and responses; and methods that are yet to emerge, thus encouraging audit innovation.
- *Expressly integrate the requirements for the auditor's use of confirmation with the requirements of the Board's risk assessment standards, including AS 1105.* The new standard specifies certain risk-based considerations and emphasizes the auditor's responsibilities for obtaining relevant and reliable audit evidence when performing confirmation procedures.
- *Emphasize the use of confirmation procedures in certain situations.* The new standard adds a new requirement that the auditor should perform confirmation procedures for cash held by third parties, carries forward an existing requirement that the auditor should perform confirmation procedures for accounts receivable, and adds a new provision that the auditor may otherwise obtain audit evidence by directly accessing information maintained by a knowledgeable external source for cash and accounts receivable. In addition, the new standard carries forward an existing requirement to consider confirming the terms of certain other transactions.
- *Address situations in which it would not be feasible for the auditor to obtain information directly from a knowledgeable external source.* The new standard provides that if it would not be feasible for the auditor to obtain audit evidence directly from a knowledgeable external source for accounts receivable, the auditor should perform other substantive audit procedures, including tests of details, that involve obtaining audit evidence from external sources indirectly.
- *Communicate to the audit committee certain audit responses to significant risks.* Under the new standard, for significant risks associated with cash or accounts receivable, the auditor is required to communicate with the audit committee when the auditor did not perform confirmation procedures or otherwise obtain audit evidence by directly accessing information maintained by a knowledgeable external source.
- *Reflect the relatively insignificant amount of audit evidence obtained when using negative confirmation requests.* Under the new standard, the use of negative confirmation requests may provide sufficient appropriate audit evidence only when combined with other substantive audit procedures. The new standard includes examples of situations in which the use of negative confirmation requests in combination with other substantive audit procedures may provide sufficient appropriate audit evidence.
- *Emphasize the auditor's responsibility to maintain control over the confirmation process.* The new standard states that the auditor should select the items to be confirmed, send confirmation requests, and receive confirmation responses.
- *Provide more specific direction for circumstances where the auditor is unable to obtain relevant and reliable audit evidence through confirmation.* The new standard identifies situations where other procedures should be performed by the auditor as an alternative to confirmation. The new standard also includes examples of alternative procedures that individually or in combination may provide relevant and reliable audit evidence.

Introduction and Objective

(See paragraphs .01 and .02 of the new standard).

The 2022 Proposal included requirements for the auditor's use of confirmation. As discussed in the proposal, the confirmation process involves selecting one or more items to be confirmed, sending a confirmation request directly to a confirming party, evaluating the information received, and addressing nonresponses and incomplete responses to obtain audit evidence about one or more financial statement assertions. Confirmation is one of the specific audit procedures described in PCAOB standards that an auditor could perform when addressing a risk of material misstatement.[26] As is the case with other audit procedures, information obtained through confirmation may support and corroborate management's assertions or it may contradict such assertions.[27]

Under the 2022 Proposal, the auditor's objective in designing and executing the confirmation process was to obtain relevant and reliable audit evidence about one or more relevant financial statement assertions of a significant account or disclosure.[28] Existing AS 2310 does not include an objective.

As discussed below, the Board has modified the introduction and objective in the proposed standard in several respects.

A number of commenters stated that the objective of the proposed standard was clear. One commenter stated that the objective should be to provide requirements and guidance in situations where the auditor, as a result of its risk-assessment procedures, determines that confirmation procedures provide an appropriate response to one or more assertions related to an identified risk of material misstatement. Another commenter asserted that the objective in the proposed standard did not result in greater clarity than the proposed objective in the 2010 Proposal and created a wider gap between the PCAOB's standards and the equivalent standard of the IAASB.

Having considered these comments, the Board has revised the introduction to provide that the new standard establishes requirements regarding obtaining audit evidence from a knowledgeable external source through the auditor's use of confirmation. The introduction further states that the new standard includes additional requirements regarding obtaining audit evidence for cash, accounts receivable, and terms of certain transactions. The Board believes that this language more clearly aligns with the approach to the auditor's use of confirmation in the new standard and the inclusion of specific requirements in the new standard with respect to cash, accounts receivable, and terms of certain transactions.

In addition, the Board has added the phrase ''from a knowledgeable external source'' to the objective, such that the new standard provides that the objective of the auditor in designing and executing the confirmation process is to obtain relevant and reliable audit evidence from a knowledgeable external source about one or more relevant financial statement assertions of a significant account or disclosure. This language underscores that, when properly designed and executed, the confirmation process involves obtaining audit evidence regarding specific items from a knowledgeable external source. A knowledgeable external source, as referred to in the new standard, generally is a third party who the auditor believes has knowledge of the information that may be used as audit evidence. To the extent that this objective differs from the objective in standards adopted by other standard-setting bodies on the auditor's use of confirmation, the Board believes it appropriately reflects the Board's approach in the new standard and is consistent with its statutory mandate to protect the interests of investors and further the public interest. The next section of this exhibit further discusses the relationship of the confirmation process to the auditor's identification and assessment of, and response to, the risks of material misstatement.

Relationship of the Confirmation Process to the Auditor's Identification and Assessment of and Response to the Risks of Material Misstatement

(See paragraphs .03–.07 of the new standard).

When an auditor uses confirmation, the auditor should be mindful of, and comply with, the existing obligation to exercise due professional care in all matters relating to the audit.[29] Due professional care requires the auditor to exercise professional skepticism, which is an attitude that includes a questioning mind and a critical assessment of audit evidence. Professional skepticism should be exercised throughout the audit process,[30] including when identifying information to confirm, identifying confirming parties, evaluating confirmation responses, and addressing nonresponses. The requirements related to exercising professional skepticism, in combination with requirements in other PCAOB standards, are designed to reduce the risk of confirmation bias, a phenomenon wherein decision makers have been shown to actively seek out and assign more weight to evidence that confirms their hypothesis, and ignore or assign less weight to evidence that could disconfirm their hypothesis.[31]

The 2022 Proposal described how the proposed standard would work in conjunction with the PCAOB standards on risk assessment. AS 2110 establishes requirements regarding the process of identifying and addressing the risks of material misstatement of the financial statements, and AS 2301, *The Auditor's Responses to the Risks of Material Misstatement,* establishes requirements regarding designing and implementing appropriate responses to the risks of material misstatement. Fundamental to the PCAOB's risk assessment standards is the concept that as risk increases, so does the amount of evidence that the auditor should obtain.[32] Further, evidence obtained from a knowledgeable external source generally is more reliable than evidence obtained only from internal company sources.[33]

Where the auditor uses confirmation as part of the auditor's response, the 2022 Proposal addressed the auditor's responsibilities for designing and executing the confirmation process to obtain relevant and reliable audit evidence. When properly designed and executed, the confirmation process can be an effective and efficient way of obtaining relevant and reliable external audit evidence, including in situations where the auditor identifies an elevated risk of material misstatement due to error or fraud.

[26] *See, e.g.,* AS 1105.14 and .18.

[27] *See* AS 1105.02.

[28] An account or disclosure is a significant account or disclosure if there is a reasonable possibility that the account or disclosure could contain a misstatement that, individually or when aggregated with others, has a material effect on the financial statements, considering the risks of both overstatement and understatement. *See* footnote 33 of AS 2110, *Identifying and Assessing Risks of Material Misstatement;* paragraph .A10 of AS 2201, *An Audit of Internal Control Over Financial Reporting That Is Integrated with An Audit of Financial Statements.*

[29] *See* AS 1015, *Due Professional Care in the Performance of Work.* The Board currently has a separate standard-setting project to reorganize and consolidate a group of interim standards adopted by the Board in Apr. 2003, including AS 1015. *See Proposed Auditing Standard—General Responsibilities of the Auditor in Conducting an Audit and Proposed Amendments to PCAOB Standards,* PCAOB Rel. No. 2023–001 (Mar. 28, 2023).

[30] *See* AS 1015.07–.08.

[31] For a discussion of confirmation bias, *see, e.g.,* Raymond S. Nickerson, *Confirmation Bias: A Ubiquitous Phenomenon in Many Guises,* 2 Review of General Psychology, 175 (1998).

[32] *See* AS 1105.05.

[33] *See* AS 1105.08.

The 2022 Proposal also recognized that performing confirmation procedures can effectively and efficiently provide evidential matter about certain financial statement assertions, including existence, occurrence, completeness, and rights and obligations. For example, confirmation may provide audit evidence related to the existence of cash, accounts receivable, and financial instruments, or the completeness of debt. However, the confirmation process generally provides less relevant evidence about the valuation assertion (*e.g.,* the confirming party may not intend to repay in full the amount owed, or the custodian may not know the value of shares held in custody). Confirmation could also be used to obtain audit evidence about the terms of contractual arrangements (*e.g.,* by verifying supplier discounts or concessions, corroborating sales practices, or substantiating oral arrangements and guarantees). Information in confirmation responses may indicate the existence of related parties, or relationships or transactions with related parties, previously undisclosed to the auditor.

The Board also observed in the 2022 Proposal that, in some situations, an auditor may determine that evidence obtained through confirmation may constitute sufficient appropriate audit evidence for a particular assertion, while in other situations performing other audit procedures in addition to confirmation may be necessary to obtain sufficient appropriate audit evidence. For example, for significant unusual sales transactions and the resulting accounts receivable balances, an auditor might confirm significant terms of the transactions and the receivable balances with the transaction counterparties and perform additional substantive procedures, such as examination of shipping documents and subsequent cash receipts. Determining the nature, timing, and extent of confirmation procedures, and any other additional audit procedures, is part of designing and implementing the auditor's response to the assessed risk of material misstatement.

The Board adopted the provisions in the 2022 Proposal that address the relationship of the confirmation process to the auditor's identification and assessment of and response to the risks of material misstatement, with certain modifications discussed below.

Overall, commenters expressed support for aligning the proposed standard on confirmation with the PCAOB's existing risk assessment standards. Several commenters stated that they had not identified changes needed to the proposed standard to align further with the PCAOB's risk assessment standards. Other commenters, as discussed below, called for various changes to the proposed provisions:

- Several commenters suggested that there could be further alignment of the 2022 Proposal with the risk assessment standards to enable the level of risk to drive the nature of the audit response. A number of commenters asserted that the 2022 Proposal included certain prescriptive requirements for the confirmation process, regardless of the assessed level of risk, and that those provisions could detract from the auditor's ability to apply professional judgment to determine the appropriate audit response. Consistent with the objective of the new standard, the requirements under the new standard apply to a significant account or disclosure.[34] The new standard thus does not establish a presumption to confirm cash or accounts receivable if the auditor has not determined cash or accounts receivable to be a significant account. The auditor may choose to perform confirmation procedures, however, in situations other than those specifically addressed in paragraphs .24 through .30 of the new standard. The new standard does not otherwise prescribe the timing or extent of confirmation procedures, which are discussed as part of the auditor's response to the risks of material misstatement in AS 2301.
- Several commenters stated that paragraphs .06 and .07 of the proposed standard overly emphasized confirmation as being the most persuasive substantive audit procedure, with any other procedure thereby viewed as being less persuasive. One commenter asserted that that the 2022 Proposal appeared to be premised on an assumption that third-party confirmations represent ''first best'' audit evidence, regardless of the facts and circumstances. In addition, one commenter questioned whether the Board intended for confirmation to be used whenever possible to obtain evidence. Having considered these comments, the Board has made several changes in the new standard to clarify certain provisions. In the new standard, the Board has revised paragraph .06, which discusses obtaining audit evidence from knowledgeable external sources, to emphasize the source of the audit evidence, rather than the type of audit procedure performed. The Board understands that advances in technology, as well as changes in attitudes towards confirmation (*e.g.,* the potential hesitation of confirming parties to reply to a confirmation request from auditors because of the concern of falling victim to a phishing attack), have led auditors to perform other types of audit procedures that can provide relevant and reliable external evidence.
- Some commenters stated that the proposed standard could give rise to unrealistic expectations about confirmation procedures effectively addressing the risk of material misstatement due to fraud in all circumstances. While the Board does not believe that the new standard creates an unrealistic expectation about audit evidence obtained through confirmation, the appropriate focus of the auditor should be the obligation to obtain relevant and reliable audit evidence. Accordingly, the Board did not adopt paragraph .07 of the proposed standard, which had provided that ''in situations involving fraud risks and significant unusual transactions, audit evidence obtained through the confirmation process generally is more persuasive than audit evidence obtained solely through other procedures.''
- Several commenters recommended that the standard address the current and anticipated use of technology to enable auditors to obtain sufficient appropriate audit evidence through performing audit procedures other than confirmation. Some commenters provided examples of using technology-based procedures in lieu of confirmations, including accessing company balances directly at the relevant financial institution and testing internal data against external data sources using audit data analytics. The Board considered these comments in developing the new standard. In particular, as discussed below, the new standard includes a presumption for the auditor to confirm cash and accounts receivable, or otherwise obtain relevant and reliable audit evidence for these accounts by directly accessing information maintained by a knowledgeable external source.
- One commenter suggested that the note to paragraph .05 of the proposed standard should also direct the auditor to take into account internal controls over cash, including segregation of duties, when there are side agreements to revenue transactions. The Board did not make this change in the new standard. The Board notes that internal control considerations are addressed by existing PCAOB standards, which

[34] AS 2110.59e directs the auditor to identify significant accounts and disclosures and their relevant assertions.

require obtaining an understanding of the company's controls when assessing the risk of material misstatement and identifying and testing certain controls when the auditor plans to rely on controls to respond to the assessed risk.[35] The auditor would consider controls over cash when performing these procedures.

- With respect to the examples of assertions in paragraph .06 of the proposed standard, one commenter asserted that a final standard should more fully explain that a confirmation generally serves to test the assertion of existence, but does not serve to test other assertions such as valuation, including collectability. The Board did not incorporate such language in the new standard because it believes that limiting the use of confirmation to the existence assertion would be overly prescriptive and might disallow use of confirmation in other situations where the auditor has determined that confirmation could be used to obtain relevant and reliable information to test other assertions.

As discussed below, the Board continues to believe that confirmation procedures generally would provide relevant and reliable audit evidence for cash and accounts receivable. Accordingly, under the new standard the auditor should perform confirmation procedures or otherwise obtain relevant and reliable audit evidence by directly accessing information maintained by a knowledgeable external source when the auditor determines that these accounts are significant accounts. In addition, the new standard specifies that when the auditor has identified a significant risk of material misstatement associated with either a complex transaction or a significant unusual transaction, the auditor should consider confirming those terms of the transaction that are associated with a significant risk of material misstatement, including a fraud risk.

Other Use of Confirmation Procedures. The 2022 Proposal requested commenters' views on whether there were additional accounts or financial statement assertions for which the auditor should be required to perform confirmation procedures. In addition, the 2022 Proposal requested views on whether the proposal was sufficiently flexible to accommodate situations where an auditor chooses to confirm information about newer types of assets (*e.g.,* digital assets based on blockchain or similar technologies).

Two investor-related groups identified specific types of additional transactions that should be subject to confirmation, including transactions (1) with unusual terms and conditions, (2) with related parties, (3) where the auditor has concern about whether side letters may exist, (4) where financing is obtained, including bank debt or supplier-provided financing, (5) involving certain sales practices, such as bill-and-hold arrangements or supplier discounts or concessions, (6) involving certain oral arrangements or guarantees, or (7) involving sales, lending, or liability for custodianship of digital assets. Another commenter suggested that confirmation of accounts payable should be considered, but not required, when auditors assess controls over the recording of liabilities to be ineffective. This commenter also suggested that the Board state that the use of confirmation is not limited to the circumstances discussed in the proposed standard.

In comparison, many firms and firm-related groups stated that the proposed standard should not prescribe additional other presumptive requirements to use confirmation. These commenters noted that doing so would be unduly prescriptive. Several commenters stated that the proposed standard provided for an appropriate amount of auditor judgment in determining when to perform confirmation procedures in situations other than those specifically addressed in the standard. In addition, several commenters indicated that the 2022 Proposal offered sufficient flexibility to accommodate situations where an auditor confirms information about newer types of assets.

Several commenters asserted that the effectiveness of confirmation procedures is negatively affected by the fact that third parties are not obligated, under legislation or regulation, to reply to an auditor's confirmation request.

The new standard does not specify additional accounts or transactions for which confirmation procedures are presumptively required beyond those in the 2022 Proposal. The PCAOB's risk assessment standards are foundational and are used by the auditor to determine the appropriate response to identified risks of material misstatement. The Board believes that confirmation can be an important tool for addressing certain risks for cash and accounts receivable, and for obtaining audit evidence about other financial relationships, and certain terms of complex transactions or significant unusual transactions, as discussed below. However, identifying additional accounts or scenarios that require the auditor to use confirmation, without regard to the specific facts and circumstances of the audit including the assessed risk of material misstatement and whether other audit procedures would provide sufficient appropriate audit evidence, would be overly prescriptive.

The auditor's responsibilities relevant to the use of confirmation are also addressed in several other PCAOB standards. AS 2315, *Audit Sampling,* which discusses planning, performing, and evaluating audit samples, is used if the auditor uses sampling in the confirmation process. AS 2510, *Auditing Inventories,* addresses confirmation of inventories in the hands of public warehouses or other outside custodians. Additionally, the new standard does not address auditor responsibilities regarding inquiries concerning litigation, claims, and assessments, which are addressed in AS 2505, *Inquiry of a Client's Lawyer Concerning Litigation, Claims, and Assessments.*

Designing Confirmation Requests

(See paragraphs .08–.13 of the new standard).

A properly designed and executed confirmation process may provide relevant and reliable audit evidence. Auditor responsibilities regarding designing a confirmation request are described in paragraphs .08–.13, as follows:

- Paragraph .08 discusses identifying information to confirm;
- Paragraphs .09 through .11 discuss identifying the confirming parties for confirmation requests; and
- Paragraphs .12 through .13 discuss using negative confirmation requests.

The new standard does not prescribe a particular format for a confirmation request. For example, requests could be paper-based or electronic, specifying the information to be confirmed or providing a blank response form, or sent with or without the involvement of an intermediary that facilitates electronic transmission. As a practical matter, the auditor determines the format of a confirmation request to increase the likelihood that the request is received and clearly understood by the confirming party, taking into consideration, among other things, the facts and circumstances of the company and the confirming party.

Identifying Information To Confirm

The 2022 Proposal provided that the auditor should, as part of designing confirmation requests, identify information related to the relevant assertions that the auditor plans to verify with confirming parties or (when using a blank form) obtain from confirming parties. Such information

[35] *See, e.g.,* AS 2110 and AS 2301.

could include transaction amounts, transaction dates, significant terms of transactions, and balances due to or from the confirming party as of a specific date. In addition, the 2022 Proposal discussed that using a blank confirmation request generally provides more reliable audit evidence than using a confirmation request that includes information the auditor is seeking to confirm (*e.g.,* a customer account balance). In the latter scenario, it is possible that a confirming party could agree to the information without verifying it against the confirming party's records.

The Board adopted the proposed requirement relating to identifying information to confirm with certain modifications discussed below.

Several commenters indicated that the provisions of the 2022 Proposal related to identifying information to confirm were clear and appropriate. A few commenters requested retaining a statement analogous to a statement in existing AS 2310 to emphasize in the standard that responding to blank form confirmation requests generally requires additional effort, which might lower the response rates and lead auditors to perform alternative procedures. One commenter expressed concern that fraudsters could use fake confirmation requests and, in particular, fake blank form confirmation requests, to defraud bank customers (*e.g.,* by soliciting their bank details).

Existing AS 2310 includes details regarding the form of confirmation requests, which includes general information regarding blank form positive confirmation requests. This information has been included in the new standard in a note to paragraph .08. Further, after considering the comments received, the new standard includes language not included in the proposed standard that is similar to language in existing AS 2310. This language explains that responding to blank form confirmation requests generally requires additional effort, which might lower the response rates and lead auditors to perform alternative procedures for more selected items. Despite the possibility of lower response rates, responses to blank form confirmation requests may provide more reliable audit evidence than responses to confirmation requests using pre-filled forms.

Paragraph .17 of the proposed standard also included a reminder of an existing requirement in AS 1105.10, pursuant to which the auditor should test the accuracy and completeness of information produced by the company that the auditor uses as audit evidence. The reminder emphasized that, in the confirmation process, the requirement in AS 1105.10 applies to the information produced by the company (*e.g.,* populations from which items are selected for confirmation, such as detailed account listings, vendor listings, and contractual agreements) that the auditor uses in selecting the items to confirm.

Several firms and firm-related groups indicated that the existing requirement in AS 1105.10 for the auditor to evaluate information produced by a company as audit evidence was sufficient and that paragraph .17 of the proposed standard was duplicative. A few commenters stated that confirmation requests are often designed to test the accuracy of a given account balance or disclosure and, accordingly, that the requirement should only focus on testing completeness. Finally, a few commenters suggested that the standard, consistent with AS 1105.10, should allow for the auditor to test controls over the accuracy and completeness of information produced by the company that the auditor uses in selecting items to confirm.

After considering these comments, in order to avoid duplication with other PCAOB standards, the new standard does not include paragraph .17 of the proposed standard.

Identifying Confirming Parties for Confirmation Requests

The 2022 Proposal provided that, to obtain reliable audit evidence from the confirmation process, the auditor should direct the confirmation requests to third parties (individuals or organizations) who are knowledgeable about the information to be confirmed. That provision was similar to existing AS 2310.26, which directs the auditor to send confirmation requests to third parties who the auditor believes are knowledgeable about the information to be confirmed, such as a counterparty who is knowledgeable about a transaction or arrangement.

When designing confirmation requests, an auditor may become aware of information about a potential confirming party's motivation, ability, or willingness to respond, or about the potential confirming party's objectivity and freedom from bias with respect to the audited entity. Because this type of information can affect the reliability of audit evidence provided by the confirming party to the auditor, the 2022 Proposal, similar to existing AS 2310.27, provided that the auditor should consider any such information that comes to the auditor's attention when selecting the confirming parties. The note to paragraph .19 of the proposed standard further emphasized that such information may indicate that the potential confirming party has incentives or pressures to provide responses that are inaccurate or otherwise misleading.[36]

The 2022 Proposal also provided that the auditor should consider the source of any such information. For example, if management indicates to the auditor that a potential confirming party is unlikely to respond to a confirmation request, management may have other reasons to avoid a confirmation request being sent (*e.g.,* concealing management's fraudulent understatement of the amount the company owes to that party).

In addition, the 2022 Proposal provided more specific direction than existing AS 2310 for situations in which the auditor is unable to identify a confirming party who, in response to a confirmation request, would provide relevant and reliable audit evidence about a selected item. In such a scenario, the 2022 Proposal prescribed that the auditor should perform alternative procedures.

The 2022 Proposal also provided that the auditor should determine that confirmation requests are properly addressed, thus increasing the likelihood that they are received by the confirming party. The 2022 Proposal did not prescribe the nature or extent of procedures to be performed by the auditor when making this determination, thereby allowing the auditor to tailor the procedures to the facts and circumstances of the audit. For example, in practice, some auditors compare some or all confirming party addresses, which are typically provided by the company, to physical addresses or email domains included on the confirming party's website.

Alternatively, when using an intermediary to facilitate direct electronic transmission of confirmation requests and responses, Appendix B of the proposed standard required the

[36] *See also* paragraph .10 of AS 2401, *Consideration of Fraud in a Financial Statement Audit* (stating that fraud may be concealed through collusion among management, employees, or third parties, and that an auditor may receive a false confirmation from a third party that is in collusion with management); SAPA No. 8 at 12 (stating that, when using confirmation to address fraud risks in emerging markets, ''the auditor should evaluate who the intended recipient of the confirmation request is and whether the company's management has an influence over this individual to provide false or misleading information to the auditor'' and that ''[f]or example, if the company is the only or a significant customer or supplier of the confirming entity, the staff of that entity may be more susceptible to pressure from the company's management to falsify documentation provided to the auditor'').

auditor to obtain an understanding of the intermediary's controls that address the risk of interception and alteration of the confirmation requests and responses and determine whether the relevant controls used by the intermediary are designed and operating effectively. The Board noted in the 2022 Proposal that, where an auditor determines that controls that address the risk of interception and alteration also include controls related to validating the addresses of confirming parties, the auditor may be able to determine that audit procedures performed in accordance with Appendix B are sufficient to determine that confirmation requests are properly addressed. In situations where the auditor determines that the intermediary's controls that address the risk of interception and alteration do not also include controls related to validating the addresses of confirming parties, the Board also noted that the auditor would need to perform other procedures to comply with the requirements of the proposed standard.

The Board adopted the requirements relating to identifying confirming parties for confirmation requests as proposed, with certain modifications discussed below.

Several commenters indicated that the provisions of the proposed standard related to identifying confirming parties were sufficiently clear and appropriate. One commenter indicated that the Board should require the auditor to send confirmation requests directly to an individual, rather than allow the auditor to choose between sending the request either to an individual or an organization. In this commenter's view, sending a confirmation request directly to an individual could increase the reliability of audit evidence obtained through the confirmation process. One commenter indicated that the Board should amend paragraph .18 of the proposed standard to read ''the auditor should direct confirmation requests to confirming parties (individuals or organizations) who are *expected to be* knowledgeable about the information to be confirmed and determine that the confirmation requests are appropriately addressed.''

Because auditors often may have no or limited interaction with the personnel of confirming organizations, they may not be able to select an individual addressee for the confirmation request. As a result, the Board believes that allowing the auditor to address a confirmation request to an organization that is knowledgeable about the information to be confirmed is practicable and appropriate. Paragraph .20 of the proposed standard stated that the auditor should perform alternative procedures when the auditor is unable to identify a confirming party who, in response to a confirmation request, would provide relevant and reliable audit evidence about the selected item.

The Board has modified this language, which appears in paragraph .11 of the new standard, to emphasize that if the auditor is unable to identify a confirming party for a selected item who would provide relevant and reliable audit evidence in response to a confirmation request, including considering any information about the potential confirming party discussed in paragraph .10, the auditor should perform alternative procedures in accordance with Appendix C. In addition, the Board has added a note to paragraph .11 of the new standard to reiterate that AS 1105.08 provides that the reliability of evidence depends on the nature and source of the evidence and the circumstances under which it is obtained.

These revisions are intended to underscore that auditors should consider information that may indicate that a potential confirming party has incentives or pressures to provide responses that are inaccurate or misleading, and remind auditors that the reliability of audit evidence depends not only on its nature and source, but also the circumstances under which it is obtained. For example, restrictions on access to a potential confirming party that cause the auditor to identify and send a confirmation request to a different confirming party or to perform alternative procedures may themselves raise questions as to the reliability of the audit evidence that the auditor subsequently obtains from the other confirming party or through performing alternative procedures. In addition, the revisions to paragraph .11 clarify that the paragraph applies to a confirming party for an individual item selected for confirmation, rather than more broadly to a group of confirming parties that might provide audit evidence with respect to relevant assertions for an entire account, such as accounts receivable.

Several commenters on the 2022 Proposal also indicated that the requirement to send a confirmation request directly to the confirming party and determine that the request is properly addressed was sufficiently clear and appropriate. One of these commenters indicated that the standard should address procedures to verify the recipient's mailing or email address while the other commenters indicated there was no need to include specific procedures in the standard. Another commenter requested more guidance around verifying email addresses. One commenter indicated that there should be no specific requirement to check addresses, as such a requirement would not, in the commenter's view, deter those intent on deceiving auditors. Lastly, one commenter requested clarification as to whether an auditor should send either an initial confirmation request or a second request when the auditor is aware of information that indicates that the confirming party would be unlikely to respond.

The Board continues to believe that requiring auditors to determine that confirmation requests are appropriately addressed is critically important to the effectiveness of the confirmation process. The Board has noted above some of the ways in which an auditor might comply with this requirement but is not including such examples in the text of the new standard to avoid the possible misinterpretation that the examples describe the only steps an auditor could take in determining whether a confirmation request is properly addressed.

With respect to one commenter's suggestion that the Board clarify whether an auditor should send a confirmation request if the auditor is aware of information indicating that the confirming party would not respond, the Board believes the new standard is sufficiently clear. Paragraph .10 of the new standard states, in part, that if the auditor is aware of information about a potential confirming party's ''willingness to respond,'' the auditor should consider this information, including its source, in selecting the confirming parties. Further, paragraph .11 of the new standard states that, if the auditor is unable to identify a confirming party for a selected item who would provide relevant and reliable audit evidence in response to a confirmation request, the auditor should perform alternative procedures for the selected item in accordance with Appendix C of the new standard.

Using Negative Confirmation Requests

There are ''positive'' and ''negative'' types of confirmation requests. A positive confirmation request is a confirmation request in which the auditor requests a confirmation response. With a negative confirmation request, the auditor requests a confirmation response only if the confirming party disagrees with the information provided in the request. The auditor generally obtains significantly less audit evidence when

using negative confirmation requests than when using positive confirmation requests. A confirming party might not respond to a negative confirmation request because it did not receive or open the request, or alternatively the confirming party might have read the request and agreed with the information included therein.

Because of the limited evidence provided when using negative confirmation requests, the 2022 Proposal provided that the auditor may not use negative confirmation requests as the sole substantive procedure for addressing the risk of material misstatement to a financial statement assertion. Instead, the 2022 Proposal provided that the auditor may use negative confirmation requests only to supplement audit evidence provided by other substantive procedures (*e.g.,* examining subsequent cash receipts, including comparing the receipts with the amounts of respective invoices being paid; examining shipping documents; examining subsequent cash disbursements; or sending positive confirmation requests). In addition, Appendix B to the proposed standard provided examples of situations in which the use of negative confirmation requests, in combination with the performance of other substantive audit procedures, may provide sufficient appropriate audit evidence. In contrast, under existing AS 2310, the auditor may use negative confirmation requests where certain criteria are present and should consider performing other substantive procedures to supplement their use.

The Board adopted the requirements for using negative confirmation requests as proposed. Most commenters on this aspect of the 2022 Proposal expressed support for the proposed prohibition on using negative confirmation requests as the sole substantive procedure with a number of commenters stating that negative confirmation requests alone do not provide sufficient appropriate audit evidence.

Another commenter suggested that the word ''generally'' should be removed from paragraph .21 of the proposed standard to emphasize that a negative confirmation is not as persuasive as a positive confirmation. This commenter indicated that, in situations where the use of negative confirmation requests, in combination with the performance of other substantive audit procedures, may provide sufficient appropriate audit evidence, auditors should be required to specifically document their consideration of certain examples included in paragraph .B1 of the proposed standard.

Lastly, a few commenters indicated that additional guidance on the use of negative confirmations, and specifically on the use of substantive analytical procedures to supplement the use of negative confirmations, was needed while another commenter indicated that the examples in Appendix B would assist auditors in applying the requirements related to the use of negative confirmation requests.

After considering the comments on the 2022 Proposal, the Board has determined that the requirements in the 2022 Proposal relating to the use of negative confirmation requests are both appropriate and sufficiently clear. For ease of reference, the examples of situations in which the use of negative confirmation requests, in combination with the performance of other substantive audit procedures, may provide sufficient appropriate audit evidence now appear in paragraph .13 of the new standard rather than Appendix B. The Board is not including in the new standard additional examples of other substantive procedures that may be used to supplement negative confirmation requests, as some commenters had suggested. While such procedures may be appropriate in some circumstances, including such examples in the new standard could be misperceived as establishing a formal checklist, whereas determining the necessary nature, timing, and extent of audit procedures that provide sufficient appropriate audit evidence would depend on the facts and circumstances of each audit.

Paragraph .12 of the new standard retains the word ''generally'' (*i.e.,* ''[g]enerally, the auditor obtains significantly less audit evidence when using negative confirmation requests than when using positive confirmation requests'') to acknowledge that in some circumstances using positive confirmations may not provide the auditor with the amount of evidence that the auditor planned to obtain (*e.g.,* if the auditor does not receive responses to some or all positive confirmation requests).

Maintaining Control Over the Confirmation Process

(See paragraphs .14–.17 and .B1–.B2 of the new standard).

The Requirement for the Auditor To Maintain Control Over the Confirmation Process

The 2022 Proposal included a provision, consistent with AS 2310, that the auditor should maintain control over the confirmation process to minimize the likelihood that information exchanged between the auditor and the confirming party is intercepted and altered. This is because the reliability of audit evidence provided by confirmation depends in large part on the auditor's ability to control the integrity of confirmation requests and responses. The 2022 Proposal also provided that, as part of maintaining control, the auditor should send confirmation requests directly to the confirming party and receive confirmation responses directly from the confirming party.

The Board adopted the requirements for maintaining control over the confirmation process as proposed, with one modification.

Commenters on this topic largely agreed that the auditor should maintain control over the confirmation process. One commenter stated that setting forth the requirement to maintain control over the confirmation process and the requirement to send confirmation requests directly to the confirming party in separate paragraphs might suggest that there are different responsibilities for the auditor. This commenter recommended combining the requirements to clarify that the auditor's responsibility is to send the confirmation directly while maintaining control of the process.

After considering the comments on the 2022 Proposal, the Board has determined that the proposed requirements are both appropriate and sufficiently clear, and adopted them as proposed, with the addition of a new paragraph that clarifies how an external auditor can use internal auditors in a direct assistance capacity as part of the confirmation process, as further discussed below. Paragraph .14 of the new standard establishes the auditor's responsibility for maintaining control over the confirmation process, and the other paragraphs in this section of the new standard specify auditor responsibilities regarding certain aspects of maintaining control, as discussed below. For example, consistent with the definition of ''confirmation process,'' [37] paragraph .15 of the new standard requires that the auditor select the items to be confirmed, send the confirmation requests and receive the confirmation responses.

[37] The term ''confirmation process'' is defined in paragraph .A3 of the new standard as ''[t]he process that involves selecting one of more items to be confirmed, sending a confirmation request directly to a confirming party, evaluating the information received, and addressing nonresponses and incomplete responses to obtain audit evidence about one or more financial statement assertions.''

Selecting an item involves the auditor identifying the information to be included on the confirmation request. Paragraph .16 of the new standard specifies that maintaining control over the confirmation process by the auditor involves sending the confirmation request directly to and obtaining the confirmation response directly from the confirming party.

Using and Intermediary To Facilitate Direct Electronic Transmission of Confirmation Requests and Responses

Background and Requirements

As discussed above, certain financial institutions and other companies have adopted the policy of responding to electronic confirmation requests from auditors only through another party that they, or the auditor, engage as an intermediary to facilitate the direct transmission of information between the auditor and the confirming party. The Board understands that such policies are intended to facilitate the timeliness and quality of confirmation responses provided by the confirming party to the auditor.

While the involvement of intermediaries is not discussed in existing AS 2310, the use of an intermediary does not relieve the auditor of the responsibility under PCAOB standards to maintain control over confirmation requests and responses. Because an intermediary's involvement may affect the integrity of information transmitted between the confirming party and the auditor, the 2022 Proposal provided that the auditor should evaluate the implications of such involvement for the reliability of confirmation requests and responses. Specifically, paragraphs .B2 and .B3 of the proposed standard provided that:

- The auditor's evaluation should address certain aspects of the intermediary's controls that address the risk of interception and alteration of communications between the auditor and the confirming party;
- The auditor's evaluation should assess whether circumstances exist that give the company the ability to override the intermediary's controls (*e.g.,* through financial or other relationships); and
- The auditor should not use an intermediary if information obtained by the auditor indicates that (i) the intermediary has not implemented controls that are necessary to address the risk of interception and alteration of the confirmation requests and responses, (ii) the necessary controls are not designed or operating effectively, or (iii) circumstances exist that give the company the ability to override the intermediary's controls.

The Board adopted the proposed requirements substantially as proposed, with certain modifications discussed below.

A few commenters on the 2022 Proposal indicated that it is not clear what an ''intermediary'' is and requested clarification. The Board is not adding a definition of the term ''intermediary'' in the new standard as it simply intends to use the term in describing a particular scenario under the new standard where a third party is engaged by the auditor or a confirming party to facilitate direct electronic transmission of confirmation requests and responses between the auditor and the confirming party. The Board believes that its intent in using the term ''intermediary'' is sufficiently clear.

Overall, several commenters indicated that the requirements in the 2022 Proposal to evaluate the implications of using an intermediary to facilitate direct electronic transmission of confirmation requests and responses were appropriate. However, as discussed below, a number of these commenters and other commenters stated that additional clarity may be required to ensure that the proposed revisions are operational in practice, or otherwise requested additional guidance. Conversely, a few commenters expressed the view that requirements in the 2022 Proposal regarding the implications of using an intermediary were not appropriate or sufficiently clear. One of those commenters asserted that the requirement to assess the intermediary would result in significant additional work for auditors and that it is not currently common practice to directly assess intermediaries in this manner. As discussed in Section IV of the 2022 Proposal, firm methodologies reviewed by the staff generally include guidance on maintaining control over the confirmation process, using intermediaries to facilitate the electronic transmission of confirmation requests and responses, and assessing controls at the intermediaries. The evidence from the PCAOB staff's review does not suggest that the requirements in Appendix B of the new standard would create significant additional work for auditors, nor did the commenters provide evidence to the contrary.

Separately, as the 2022 Proposal provided that the auditor should not use an intermediary if information obtained by the auditor indicates that certain conditions are present, several commenters stated that the presence of indicators would not necessarily mean that the intermediary is not fit for use. For example, these commenters stated that in a situation where an intermediary's control is not designed or operating effectively, an auditor may be able to obtain an understanding of whether a specific control failure impacts the confirmation process and perform tests of other controls or other procedures at the intermediary to address the control failure.

Having considered the comments, the Board is clarifying in paragraph .B2 of the new standard that the auditor should not use an intermediary to send confirmation requests or receive confirmation responses if the auditor determines that (1) the intermediary has not implemented controls that are designed or operating effectively to address the risk of interception and alteration of the confirmation requests and responses and the auditor cannot address such risk by performing other procedures beyond inquiry, or (2) circumstances exist that give the company the ability to override the intermediary's controls. In the 2022 Proposal, the prohibition was based on an indication, rather than determination, that such circumstances exist.

For example, when performing an evaluation required by paragraphs .17 and .B1 of the new standard, an auditor could obtain a SOC report stating that a particular access control at an intermediary is not designed or operating effectively. The auditor may then be able to identify and test other controls that could mitigate the control failure described in the SOC report. In this scenario, if the auditor determines that the identified controls are designed and operating effectively and mitigate the control failure, or the auditor has performed other procedures such as obtaining computer systems event logs generated by the intermediary that provide evidence there was no unauthorized access during the relevant period, the information in the SOC report in this scenario would not necessarily mean that the auditor is not allowed to use the intermediary under the new standard.

In addition, several commenters asserted that, if an auditor were not allowed to use an intermediary under proposed paragraph .B3 and the confirming party had a policy requiring the use of an intermediary for receiving and responding to auditor confirmation requests, an auditor may be unable to comply with the proposed requirement to confirm cash, even if relevant and reliable audit evidence were otherwise available. Considering these comments, the Board has modified paragraph .B2 of the new standard to state that in

circumstances where the auditor, under paragraph .B2, should not use an intermediary to send confirmation requests or receive confirmation responses, the auditor should send confirmation requests without the use of an intermediary or, if unable to do so, perform alternative procedures in accordance with Appendix C of the new standard. The Board believes that this modification and the adoption of a provision regarding obtaining audit evidence by directly accessing information maintained by a knowledgeable external source (see discussion below), address commenters' concerns that an auditor may not be able to comply with the requirement to confirm cash.

Certain commenters asked for additional guidance on what procedures an auditor should or could perform to comply with the requirements in Appendix B. Having considered these comments, the Board determined that the new standard, consistent with the 2022 Proposal, will not specify how the auditor should perform the particular procedures required by paragraphs .B1 and .B2 regarding evaluating the implications of using an intermediary. The new standard thus allows auditors to customize their approach based on the facts and circumstances of the audit engagement and the audit firm. For example, in obtaining an understanding of the intermediary's controls that address the risk of interception and alteration of confirmation requests and responses and determining whether they are designed and operating effectively, the auditor could (i) use, where available, a SOC report that evaluates the design and operating effectiveness of the relevant controls at the intermediary; or (ii) test the intermediary's controls that address the risk of interception and alteration directly.[38]

Some commenters asked for guidance related to an acceptable window of time to be covered by ''bridge letters.'' [39] Where an auditor uses an independent service auditor's report on a service organization's controls, such procedures may involve using a bridge letter. The new standard does not specify an appropriate window of time to be covered by a bridge letter or a permissible window of time between the date covered by a bridge letter and the period when the auditor uses the intermediary to facilitate direct electronic transmission of confirmation requests and responses. Auditors should use their professional judgment based upon the facts and circumstances of the audit to determine the nature of procedures required to comply with paragraph .B1 of the new standard, including the note to paragraph .B1(b).

One commenter stated that paragraph .B2(b) of the proposed standard should have a specific documentation requirement. The Board believes that adding a specific documentation requirement is not necessary, as the auditor is required to document compliance with PCAOB standards under existing documentation requirements.[40]

Lastly, the new standard modifies the language of the 2022 Proposal to provide in the note to paragraph .B1(b) of the new standard that, if the auditor performs procedures to determine that the controls used by the intermediary to address the risk of interception and alteration are designed and operating effectively at an interim date, the auditor should evaluate whether the results of the procedures can be used ''during the period in which the auditor uses the intermediary''—rather than at ''period end,'' as described in the proposed standard—or whether additional procedures need to be performed to update the results. The Board believes that the modified provision more accurately describes the timeframe during which the results of the procedures may be used by an auditor. In addition, the modified provision clarifies that the auditor should consider the nature and extent of any changes in the intermediary's process and controls during the period between the auditor's procedures and the period the auditor uses the intermediary.

Interaction of New Standard and Proposed QC 1000

In November 2022 the Board issued for public comment a proposed quality control standard, referred to as proposed QC 1000, *A Firm's System of Quality Control*.[41] Proposed QC 1000 addresses resources used by a registered public accounting firm that are sourced from third-party providers. An intermediary that facilitates direct electronic transmission of confirmation requests and responses is one example of a ''third-party provider'' under proposed QC 1000.

Under proposed QC 1000, a firm would consider the nature and extent of resources or services obtained from third-party providers in its risk assessment process and whether the use of third-party providers poses any quality risks to the firm in achieving its quality objectives. One of the required quality objectives relates to obtaining an understanding of how such resources or services are developed and maintained and whether they need to be supplemented and adapted as necessary, such that their use enables the performance of the firm's engagements in accordance with applicable professional and legal requirements and the firm's policies and procedures.[42]

As noted above, the proposed standard on the auditor's use of confirmation included specific procedures related to the use of an intermediary, which included obtaining an understanding of the intermediary's controls that address the risk of interception and alteration of a confirmation request and response and determining whether such controls are designed and operating effectively.

A few commenters on the 2022 Proposal observed that firms may obtain and evaluate SOC reports centrally, rather than requiring that individual engagement teams obtain and evaluate the reports. One of these commenters suggested clarifying in the standard that the evaluations required by Appendix B may be performed, and the documentation may be retained centrally, as part of the firm's quality control system. Another of these commenters suggested that the requirements related to the use of an intermediary be removed entirely from the proposed confirmation standard and instead be dealt with solely in the proposed quality control standards. One commenter stated that, depending on the identified quality risks, procedures performed in accordance with QC 1000 need not align with the financial statement period-end of each audit engagement performed by the firm, which the commenter asserted was implied by paragraph .B2(b) and a related note in the proposed standard. Lastly, a few commenters indicated that it would be beneficial to explicitly link the provisions of the confirmation standard regarding the use of an intermediary with QC 1000.

[38] *See Spotlight: Observations and Reminders on the Use of a Service Provider in the Confirmation Process* (Mar. 2022), *available at https://pcaobus.org/resources/staff-publications.*

[39] Some intermediaries provide a ''bridge letter'' or ''gap letter'' issued by the independent service auditor that addresses the period from the date of the service auditor's SOC report through a subsequent date, typically the most recent calendar year end.

[40] *See, e.g.,* paragraph .05 of AS 1215, *Audit Documentation.*

[41] *See A Firm's System of Quality Control and Other Proposed Amendments to PCAOB Standards, Rules, and Forms,* PCAOB Rel. No. 2022–006 (Nov. 18, 2022).

[42] *See* paragraph .44.j of proposed QC 1000.

Having considered these comments, the Board believes that the requirements in the new standard related to the auditor's use of intermediaries, with the modifications discussed above to the requirements in the proposed standard, are sufficiently clear and appropriate. The auditor's evaluation of the intermediary's controls could be performed by an engagement team, an audit firm's national office, or a combination of both. Where the national office performs procedures relating to the intermediary (either as part of the firm's quality control activities or specifically to comply with the new standard), the engagement team would still need to consider the procedures performed by the national office and include in its audit documentation considerations specific to the individual audit engagement. For example, if a national office evaluated an intermediary's controls at an interim date, the engagement team would need to, in accordance with the note accompanying paragraph .B1(b) of the new standard, evaluate whether the results of the interim procedures could be used during the period in which the auditor uses the intermediary to facilitate direct electronic transmission of confirmation requests and responses or whether they needed to be updated.

Using Internal Audit in the Confirmation Process

The 2022 Proposal identified certain activities in the confirmation process where the auditor may not use the assistance of the company's internal audit function. Under the 2022 Proposal, the auditor was not permitted to use internal auditors for selecting items to be confirmed, sending confirmation requests, and receiving confirmation responses, because using internal audit in a direct assistance capacity for such activities would not be consistent with the auditor's responsibility to maintain control over the confirmation process.

Existing AS 2310 does not include analogous provisions. It states instead that the auditor's need to maintain control does not preclude the use of internal auditors and that AS 2605, *Consideration of the Internal Audit Function,* provides guidance on considering the work of internal auditors and on using internal auditors to provide direct assistance to the auditor.[43]

The Board adopted the proposed requirements substantially as proposed, with certain modifications discussed below.

A number of commenters, including investor-related groups, firms, and firm-related groups, agreed with the requirements proposed in the 2022 Proposal as being in line with the auditor's responsibility to maintain control over the confirmation process. Additionally, a few commenters observed that it is not current practice for auditors to use internal audit in a direct assistance capacity for selecting items to be confirmed, sending confirmation requests, or receiving confirmation responses and, therefore, that the requirements in the 2022 Proposal would not result in a significant change in practice. Conversely, one commenter stated that the proposed restrictions would impact current practice as it relates to direct assistance.

A significant number of commenters, including internal auditors and companies with internal audit functions, took exception to the provision in the 2022 Proposal to limit the external auditor's use of internal auditors in a direct assistance capacity in the confirmation process, and in some instances asserted that such limitations would be inconsistent with AS 2605. Many of these commenters also challenged the statement in the 2022 Proposal that ''[i]nvolving internal auditors or other company employees in these activities [selecting items to be confirmed, sending confirmation requests, and receiving confirmation responses] would create a risk that information exchanged between the auditor and the confirming party is intercepted and altered.'' These commenters asserted that this language called into question internal auditors' competence, objectivity, and independence. Additionally, a few commenters expressed concern with the prescriptiveness of the proposed restrictions on the use of internal auditors in the confirmation process.

Having considered the comments received, the Board notes that the discussion in the 2022 Proposal was not intended to cast doubt on the qualifications, competence, or objectivity of internal auditors. Internal auditors can and often do play an important role in enhancing the quality of a company's financial reporting. At the same time, the Board continues to believe that in order to maintain control over the confirmation process the auditor should select items to be confirmed, send confirmation requests, and receive confirmation responses.

In addition, after considering the comments received, the Board is (i) relocating the requirements related to the auditor's use of internal audit in the confirmation process to the section of the new standard on maintaining control over the confirmation process and (ii) rephrasing the requirements in terms of the auditor's affirmative responsibilities, by describing procedures the auditor is required to perform. In contrast, the proposed standard described procedures that internal auditors were not allowed to perform. As stated in footnote 7 of the new standard, auditors are permitted to use internal auditors in accordance with AS 2605, except for selecting items to confirm, sending confirmation requests, and receiving confirmation responses. The new standard does not impose any new limitations on how the internal auditors' work may affect the external auditor's audit procedures.[44] Instead, the new standard clarifies how an external auditor can use internal auditors in a direct assistance capacity as part of the confirmation process.[45]

Evaluating Confirmation Responses and Confirmation Exceptions, and Addressing Nonresponses and Incomplete Responses

(See paragraphs .18–.23 of the new standard).

Overall Approach

Under the 2022 Proposal, the auditor's responsibilities related to the confirmation process included evaluating the information received in confirmation responses and addressing nonresponses and incomplete responses. The 2022 Proposal provided that if the auditor is unable to determine whether the confirmation response is reliable, or in the case of a nonresponse or an incomplete response (*i.e.,* one that does not provide the audit evidence the auditor seeks to obtain), the auditor should perform alternative procedures.[46] The 2022 Proposal built upon requirements in existing AS 2310 that discuss addressing information obtained from the performance of confirmation procedures.

The relevant requirements in the new standard include certain modifications to the approach in the 2022 Proposal, as discussed in the sections below.

[43] *See* footnote 3 of AS 2310.

[44] AS 2605.12 states that ''the internal auditor's work may affect the nature, timing, and extent of the audit,'' including ''procedures the auditor performs when obtaining an understanding of the entity's internal control (paragraph .13),'' ''procedures the auditor performs when assessing risk (paragraphs .14 through .16),'' and ''substantive procedures the auditor performs (paragraph .17).''

[45] AS 2605.27 discusses how the auditor may use internal auditors to provide direct assistance.

[46] Alternative procedures, including the relevant exception described in Appendix C of the new standard, are discussed below.

Evaluating the Reliability of Confirmation Reponses

The 2022 Proposal was intended to provide additional direction beyond what is set forth in existing AS 2310 to assist the auditor's evaluation of the reliability of confirmation responses. Specifically, the 2022 Proposal (i) described information that the auditor should take into account when performing the evaluation, and (ii) provided examples of indicators that a confirmation response may have been intercepted or altered and thus may not be reliable. In particular, the 2022 Proposal provided that the auditor should take into account any information about events, conditions, or other information the auditor becomes aware of in assessing the reliability of the confirmation response.

Under existing PCAOB standards, the auditor is not expected to be an expert in document authentication but, if conditions indicate that a document (*e.g.,* a confirmation response) may not be authentic or may have been altered, the auditor should modify the planned audit procedures or perform additional audit procedures to respond to those conditions and should evaluate the effect, if any, on the other aspects of the audit.[47] The 2022 Proposal did not alter these requirements, but specified for the confirmation process that, if the auditor were unable to determine that the confirmation response is reliable, the auditor's response should include performing alternative procedures.

The requirements for evaluating the reliability of confirmation responses were adopted substantially as proposed.

Several commenters indicated that the provisions of the 2022 Proposal related to evaluating the reliability of confirmation responses were clear and appropriate. One commenter proposed modifications to the proposed requirements, including replacing the words ''taking into account'' with ''considering'' in paragraph .25 of the proposed standard to reflect the commenter's perceived intent of the Board. One commenter asserted that paragraph .25 of the proposed standard could result in onerous documentation requirements in situations where there is a clear reason why a particular indicator is not necessarily indicative of interception or alteration of a confirmation request or confirmation response (*e.g.,* a confirmation request is sent to a general email account but returned from an email account belonging to an individual monitoring the general email account). Another commenter proposed that the Board remove one of the examples of indicators that a confirmation response may have been intercepted or altered because it appeared to create a de facto requirement that an auditor treat a confirmation response as not reliable if the original confirmation request is not returned with the confirmation response.

In addition, one commenter suggested modifying proposed paragraph .26 of the proposed standard to provide that the auditor should perform alternative procedures if the auditor became aware of any of the factors identified in paragraph .25 and was unable to overcome those factors to determine that the confirmation response is reliable. Another commenter stated that the proposed standard should acknowledge that, in certain specified circumstances, an unreliable confirmation would likely result in a scope limitation.

Having considered the comments received, the Board notes that assessing the reliability of confirmation responses is a critical component of the confirmation process. If indicators of interception or alteration are present, it is important for the auditor to address them. When the auditor follows up on a particular indicator, an auditor may determine that the confirmation requests and responses have not been intercepted or altered. For example, an auditor could verify that a difference in the confirming party's email address between the confirmation request and confirmation response occurred because the confirming party responds to confirmation requests from one central email address. The note to paragraph .18 of the new standard (paragraph .25 of the proposed standard) provides examples of information that the auditor should take into account if the auditor becomes aware of it. Under PCAOB standards, the auditor would document the procedures performed in response to information that indicates that a confirmation request or response may have been intercepted or altered. To minimize any confusion, the Board replaced the word ''indicator'' in the note with the phrase ''information that indicates,'' which has the same meaning.

In addition, to clarify that the auditor performs alternative procedures for the selected item if the auditor is unable to determine that a confirmation response regarding that item is reliable, the Board has added the phrase ''for the selected item'' after the words ''alternative procedures'' in paragraph .19 of the new standard. The Board also revised the reference in paragraph .26 of the proposed standard to performing alternative procedures ''as discussed in paragraph .31'' to ''in accordance with Appendix C'' in paragraph .19 of the new standard to reflect that alternative procedures for a selected item may not be necessary under certain circumstances, as discussed below, and to reflect the relocation of the more detailed discussion of alternative procedures from the body of the standard to Appendix C.

AS 3105, *Departures from Unqualified Opinions and Other Reporting Circumstances,* sets forth requirements regarding limitations on the scope of an audit,[48] including scope limitations relating to confirmation procedures with respect to accounts receivable.[49] One example of such a scope limitation would be the auditor's inability to confirm accounts receivable balances combined with an inability to perform other procedures in respect of accounts receivable to obtain sufficient appropriate audit evidence. The new standard does not repeat such existing requirements, as doing so would merely duplicate those requirements.

Evaluating Confirmation Exceptions and Addressing Nonresponses and Incomplete Responses

For various reasons, information in a confirmation response received by the auditor could differ from other information in the company's records obtained by the auditor. The 2022 Proposal provided that the auditor should evaluate the confirmation exceptions and determine their implications for certain aspects of the audit, as discussed below. The direction in the 2022 Proposal was more detailed than in existing AS 2310.

In particular, the 2022 Proposal provided that the auditor should evaluate whether confirmation exceptions individually or in the aggregate indicate a misstatement that should be evaluated in accordance with AS 2810. The 2022 Proposal did not, however, require investigating all confirmation exceptions to determine the cause of each confirmation exception. The 2022 Proposal also included a provision that the auditor should evaluate whether the confirmation exceptions individually, or in the aggregate, indicate a deficiency in the company's internal control over financial reporting (''ICFR'').

With regards to nonresponses and potential nonresponses, the 2022 Proposal provided that the auditor should send a second positive confirmation request to the confirming

[47] *See* AS 1105.09.

[48] *See* AS 3105.05–.15.

[49] *See* AS 3105.07.

party unless the auditor has become aware of information that indicates that the confirming party would be unlikely to respond to the auditor. Additionally, the 2022 Proposal specified that if a confirmation response is returned by the confirming party to anyone other than the auditor, the auditor should contact the confirming party and request that the response be re-sent directly to the auditor. If the auditor does not subsequently receive a confirmation response from the intended confirming party, the 2022 Proposal provided that the auditor should treat the situation as a nonresponse.

Further, in contrast with existing AS 2310, which does not address the auditor's responsibilities regarding incomplete responses, the 2022 Proposal provided that the auditor should perform alternative procedures if a confirmation response is not received or is incomplete.

The Board adopted the requirements for evaluating confirmation exceptions and addressing nonresponses as proposed, with certain modifications discussed below.

Some commenters indicated that the proposed provisions regarding evaluating confirmation exceptions and addressing nonresponses were sufficiently clear and appropriate. A few commenters stated that the Board should include requirements that limit an auditor's ability to assess confirmation exceptions as merely ''isolated exceptions.'' Similarly, one commenter asserted that the Board should require auditors to resolve any confirmation exceptions by examining other third-party evidence such as purchase orders. In light of these comments, the Board has added a new note to paragraph .20 of the new standard that states that determining that a confirmation exception does not represent a misstatement that should be evaluated in accordance with AS 2810 generally involves examining external information, which may include information that the company received from knowledgeable external sources.

In the Board's view, in many circumstances examining external evidence under the above provision is necessary, as doing so is consistent with both the goal of obtaining relevant and reliable audit evidence and the type of audit evidence sought from confirmation. For example, an auditor might send a confirmation request for a selected item to a knowledgeable confirming party regarding a $20,000 accounts receivable invoice and the confirming party (*i.e.,* the customer) indicates that the outstanding balance for this invoice at the date specified in the confirmation request is $18,000. Having investigated the $2,000 difference, the auditor learns that it does not represent a misstatement, as the customer overpaid for a different invoice but applied the overpayment to the invoice selected for confirmation and the company applied the overpayment differently. In this scenario, determining that there is not a $2,000 misstatement for the selected item would involve the auditor examining audit evidence from knowledgeable external sources, such as applicable purchase orders and customer cash payments, in addition to information generated by the company, such as customer invoices.

The note to paragraph .20 of the new standard uses the word ''generally'' to acknowledge that in some circumstances examining external audit evidence may not be necessary. For example, an auditor may have included an incorrect figure in the confirmation request and later determined that the amount confirmed by the confirming party agrees to the amount in the company's general ledger. Determining that such a confirmation exception does not represent a misstatement to be evaluated in accordance with AS 2810 would not require examining audit evidence from external sources.

One commenter suggested that the Board consider reminding auditors that, when using audit sampling, the auditor should project the misstatement results of the sample to the items from which the sample was selected in accordance with AS 2315. The Board considered this comment, but did not add a reminder regarding projecting the results of a sample as the new standard states in footnote 4 that AS 2315 addresses evaluating audit samples.

One commenter suggested that the Board restructure paragraph .27 of the proposed standard, as the auditor generally considers whether a confirmation exception is a misstatement and then determines whether there is a deficiency in internal control. In consideration of this comment, the Board has restructured paragraph .20 of the new standard to align with the typical order in which the auditor considers the two matters discussed therein (*i.e.,* an auditor typically considers whether a confirmation exception indicates a misstatement that should be evaluated in accordance with AS 2810, *Evaluating Audit Results,* and then considers whether the confirmation exception represents a deficiency in the company's ICFR).

One commenter expressed the view that the Board should not require auditors to evaluate whether a confirmation exception constitutes a control deficiency if the exception was a result of a clerical error or caused by a timing difference. The Board continues to believe that requiring the auditor to evaluate exceptions in such circumstances is appropriate and the auditor should consider whether all confirmation exceptions are control deficiencies. A clerical error or timing difference could be indicative of a deficiency in a company's ICFR.

One commenter indicated that the proposed requirement about sending a second positive confirmation request unless the auditor has become aware of information that indicates that the confirming party would be unlikely to respond to the auditor was sufficiently clear and appropriate. However, several firms commented that the requirement was too prescriptive, with one commenter asserting that the requirement could result in unnecessary and potentially ineffective administrative effort. Additionally, a few commenters expressed concern that following up on a confirmation request would not constitute sending a second confirmation request under the proposed standard, but asserted that it should be so treated.

The Board considered the comments about the requirement to send a second positive confirmation request. The use of confirmation is not required under the new standard other than for cash and accounts receivable when they are significant accounts or disclosures. Under the new standard, for cash and accounts receivable, the auditor may perform other audit procedures to obtain audit evidence by directly accessing information maintained by a knowledgeable external source. Further, for accounts receivable, in certain situations the new standard allows the auditor to obtain external information indirectly (see discussion of cash and accounts receivable below).

Because the auditor may have a choice of the audit procedure to perform, the Board believes that the auditor will select confirmation in those situations where confirming parties will be more likely to respond to the auditor. In situations where a confirming party does not respond to a confirmation request, the Board has concluded it is appropriate to require the auditor, in the case of a nonresponse to a positive confirmation request, to follow up with the confirming party. The requirement to follow up with the confirming party is included in paragraph .21 of the new standard. The new standard does not prescribe a form of the auditor's follow-up. For example, following up using the

same form of communication as in the original confirmation request (*e.g.,* email, direct electronic transmission facilitated by an intermediary) would be appropriate under the new standard. In the case of an electronic confirmation request, a follow-up request could be in the form of a reminder or automated reminder.

If the auditor subsequently receives a confirmation response, the new standard provides that the auditor should evaluate that response in accordance with paragraphs .18–.19 and evaluate any confirmation exception in accordance with paragraph .20. If the auditor's follow-up does not elicit a confirmation response, paragraph .23 of the new standard instructs the auditor to perform alternative procedures for the selected item in accordance with Appendix C of the new standard.

To clarify that the auditor performs alternative procedures for the selected item, the Board has added the phrase ''for the selected item'' after the words ''alternative procedures'' in paragraph .23 of the new standard. The Board also revised the reference in paragraph .30 of the proposed standard to performing alternative procedures ''as discussed in paragraph .31'' to refer to ''in accordance with Appendix C'' in paragraph .19 of the new standard to reflect that alternative procedures for a selected item may not be necessary under certain circumstances, as discussed below, and to reflect the relocation of the more detailed discussion of alternative procedures from the body of the standard to Appendix C.

Additional Considerations for Cash, Accounts Receivable, and Terms of Certain Transactions

(See paragraphs .24–.30 of the new standard).

In general, evidence obtained from a knowledgeable external source is more reliable than evidence obtained only from internal company sources. When cash or accounts receivable are significant accounts, there is a presumption in the new standard that the auditor should obtain audit evidence from a knowledgeable external source by performing confirmation procedures or using other means to obtain audit evidence by directly accessing information maintained by knowledgeable external sources. In addition, the new standard addresses other situations in which the auditor should consider the use of confirmation.

The Board discusses below the provisions of the new standard relating to confirming cash held by third parties, confirming accounts receivable, performing other audit procedures for accounts receivable when obtaining audit evidence directly from a knowledgeable external source would not be feasible, communicating with the audit committee in certain situations, and confirming the terms of certain other transactions. To improve the flow of the requirements in the new standard, these provisions have been placed after the general provisions that describe the auditor's responsibilities related to the confirmation process (*i.e.,* after paragraphs .08–.23).

Figure 1 depicts the relationship of the requirements in the new standard for cash and accounts receivable when they are significant accounts (paragraphs .24–.28) to the general provisions of the new standard applicable to the confirmation process (paragraphs .08–.23).[50]

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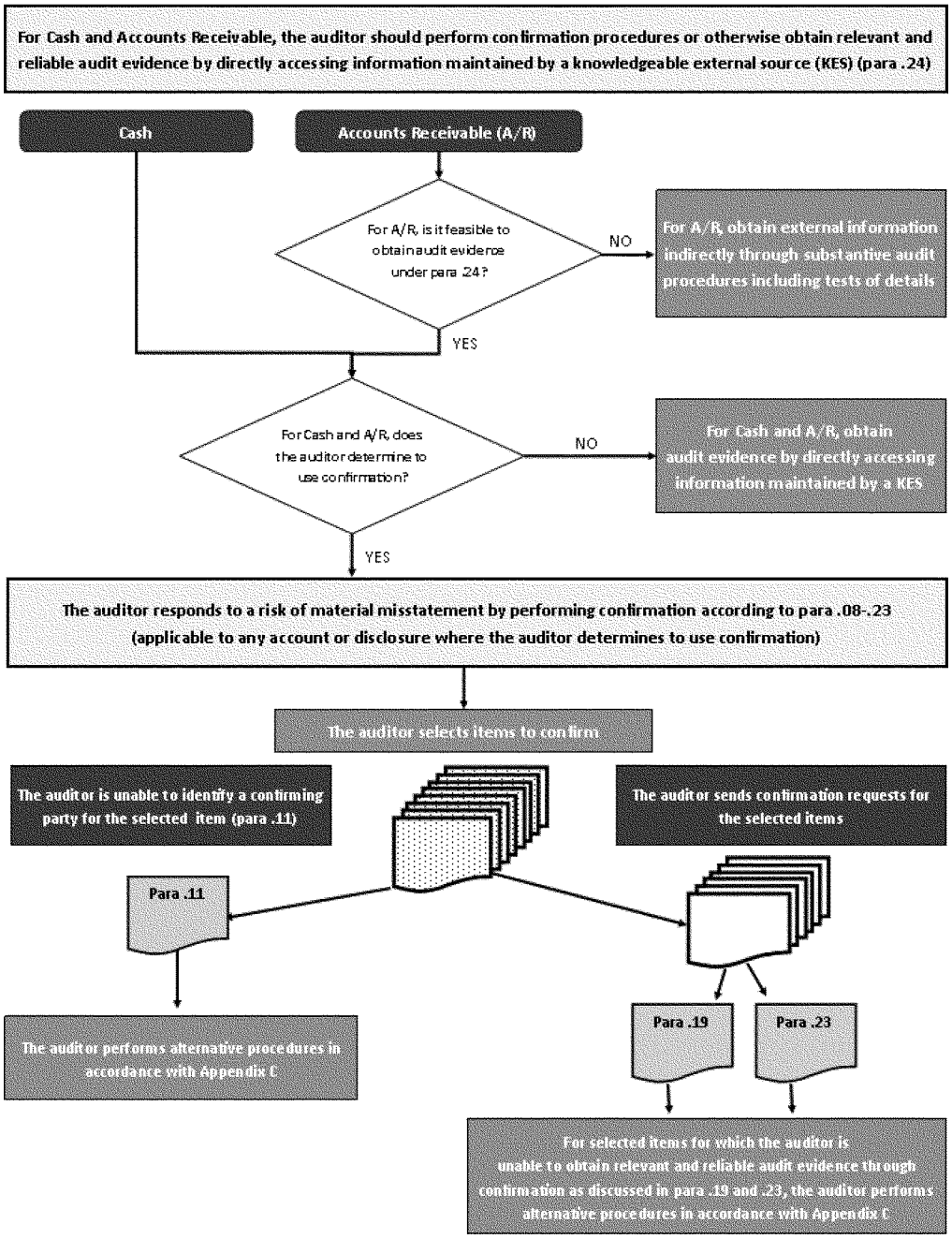
[50] The information in Figure 1 is intended to be for illustrative purposes and is not a substitute for the new standard; only the new standard provides the auditor with the definitive requirements.

Figure 1 - Additional Considerations for Cash and Accounts Receivable



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Cash Held by Third Parties

Confirming Cash

The 2022 Proposal provided that the auditor should perform confirmation procedures when auditing cash and cash equivalents held by a third party. Existing AS 2310 does not address auditor responsibilities for confirming cash.

The Board noted in the 2022 Proposal that an auditor need not necessarily confirm all cash accounts in all cases. Under PCAOB standards, the alternative means of selecting items for testing are selecting all items, selecting specific items, and audit sampling.[51] An auditor selects individual cash items to confirm following the relevant direction in PCAOB standards, including identifying and assessing the risk of misstatement and developing an audit response.[52] The particular means or combination of means of selecting cash items to confirm depend on, for example, the characteristics of the cash items and the evidence necessary to address the assessed risk of material misstatement.[53]

The 2022 Proposal emphasized that, in selecting the individual items of cash to confirm, the auditor should take into account the auditor's understanding of the company's cash management and treasury function, and the substance of the company's arrangements and transactions with third parties. For example, an auditor might select bank accounts with balances over a certain amount, accounts with a high volume of

[51] *See* AS 1105.22.

[52] *See, e.g.,* AS 2110 and AS 2301.

[53] *See* AS 1105.23 and AS 2301.03.

transactions, accounts opened or closed during the period under audit, or accounts the auditor identifies as particularly risk-prone. Alternatively, the auditor might determine it is appropriate to confirm all cash accounts. The auditor also follows the direction in PCAOB standards when determining whether performing procedures in addition to confirmation is necessary to address the assessed risk of material misstatement relating to cash.[54]

The Board adopted the proposed requirements to confirm cash, with certain modifications discussed below.

A number of commenters supported the proposed requirement for the auditor to confirm cash held by third parties. Some of these commenters stated that confirming cash has long been an audit best practice and that requiring cash confirmation would lead to more consistency in practice. In addition, several commenters stated that the standard was sufficiently risk-based (*i.e.,* by allowing the auditor to select cash accounts and other financial relationships to confirm based on the risk of material misstatement associated with cash).

Several commenters asserted that a requirement to confirm cash was not sufficiently risk-based, despite the provisions in the 2022 Proposal that described that the auditor should take into account their understanding of the company's operations in making selections of individual cash items to confirm. In particular, several commenters stated that the proposed standard would require an auditor to confirm cash without regard to the level of risk that the auditor had determined for cash in their risk assessment or when other audit procedures could produce sufficient appropriate audit evidence. Other commenters expressed the view that the requirement to confirm cash, as well as accounts receivable, should be removed, with some of these commenters suggesting that the auditor should be able to determine the audit procedure that would be most effective in obtaining relevant and reliable audit evidence, without confirmation being the ''default'' procedure.

The Board continues to believe that a presumption to confirm cash is appropriate. As discussed above, this presumption to confirm cash is consistent with current practice. Consistent with the objective of the new standard, the requirement to confirm cash, as well as accounts receivable, only applies when the auditor has determined that that these accounts are significant accounts.

With respect to confirming cash, many commenters, primarily firms and firm-related groups, expressed concern that the 2022 Proposal did not contain a provision about overcoming the presumption to confirm cash. A number of commenters also expressed the view that auditors could obtain direct-access view of bank information (or would be able to do so in the future), which could provide a more effective means of directly obtaining external evidence than sending a confirmation.

The Board agrees that if the auditor is able to perform other audit procedures that allow the auditor to obtain audit evidence by directly accessing information maintained by knowledgeable external sources, such audit evidence would be at least as persuasive as audit evidence obtained through confirmation procedures. The Board therefore added to the presumption to confirm cash (and accounts receivable) in the new standard the phrase ''or otherwise obtain relevant and reliable audit evidence by directly accessing information maintained by a knowledgeable external source.''

By way of example, the auditor might satisfy this requirement to obtain relevant and reliable audit evidence under the new standard by obtaining read-only access to information maintained by a financial institution concerning its transactions or balances with the company directly online through a secure website of the financial institution using credentials provided to the auditor by the financial institution.

The Term ''Cash and Cash Equivalents Held by Third Parties''

The 2022 Proposal provided that the term ''cash'' comprised both cash and cash equivalents. Cash equivalents generally refer to short-term, highly liquid investments that are readily convertible to known amounts of cash and are so near their maturity that they present insignificant risk of changes in value because of changes in interest rates.[55] Such assets are commonly used by companies to manage their cash holdings. The 2022 Proposal also described that the requirements for confirming cash would apply to cash held by third parties, and not limited to cash held by financial institutions. In the Board's view, this expansion of confirmation requirements was appropriate, as company funds can be held by third parties other than financial institutions, such as money transfer providers.

The Board adopted this provision as proposed in the 2022 Proposal.

There was one comment related to this aspect of the 2022 Proposal, suggesting that the new standard should specify that ''third parties'' are not limited to financial institutions. The Board believes the reference to ''third parties'' was sufficiently clear as proposed and, accordingly, has not expanded this description.

Confirming Other Financial Relationships

The 2022 Proposal provided that the auditor should consider confirming other financial relationships with the third parties with which the auditor determines to confirm cash. Such relationships can include lines of credit, other indebtedness, compensating balance arrangements, or contingent liabilities, including guarantees. As proposed, the auditor would be required under PCAOB standards to document the consideration given to the confirmation of other financial relationships and the conclusions reached.[56] Existing AS 2310 does not have an analogous requirement to confirm other financial relationships.

The Board adopted this provision as proposed, with certain modifications discussed below.

Several commenters stated that the requirements for the auditor to consider confirming other financial relationships were clear. One commenter suggested that confirming other financial relationships should be required, and that overcoming the presumption to confirm should be available only when the financial entity with which the company does business does not offer services that would give rise to other financial relationships.

A number of commenters asserted that auditors would be required to

[54] *See, e.g.,* AS 2301.09.

[55] *See, e.g.,* definition of ''cash equivalents'' in the Master Glossary of the Financial Accounting Standards Board (''FASB'') Accounting Standards Codification and of ''cash equivalents'' in the International Financial Reporting Standards (''IFRS'').

[56] *See* Note to PCAOB Rule 3101(a)(3), which states that ''(i)f a Board standard provides that the auditor ''should consider'' an action or procedure, consideration of the action or procedure is presumptively mandatory, while the action or procedure is not,'' and AS 1215.05–.06 (audit documentation should ''[d]emonstrate that the engagement complied with the standards of the PCAOB'' and must ''document the procedures performed . . . with respect to relevant financial statement assertions''). S*ee also Audit Documentation and Amendment to Interim Auditing Standards,* PCAOB Rel. No. 2004–006 (June 9, 2004), at 3 (''the auditor documents not only the nature, timing, and extent of the work performed, but also the professional judgments made by members of the engagement team and others'').

produce additional documentation of their considerations, even when a financial relationship(s) is not an area of significant risk of material misstatement. Some commenters recommended that the provision that the auditor ''should consider'' other financial relationships be changed to ''may consider,'' in order to allow for more auditor judgment in determining the audit procedures to perform.

The Board continues to believe that information about financial relationships, including off-balance sheet relationships, could be important for the audit, as it could be part of significant disclosures in a company's financial statements. Accordingly, paragraph .29 of the new standard provides that, in addition to obtaining audit evidence from a knowledgeable external source regarding cash in accordance with paragraph .24, the auditor should consider sending confirmation requests to that source about other financial relationships with the company, based on the assessed risk of material misstatement. The phrase ''based on the assessed risk of material misstatement'' was added to clarify that the auditor has flexibility in tailoring audit procedures to the level of assessed risk (*e.g.,* by including or not including confirmation in the audit response based on the auditor's assessed risk of material misstatement of other financial relationships). In addition, paragraph .29 retains the examples of other financial relationships that were included in the 2022 Proposal.

Accounts Receivable

Confirming Accounts Receivable

The 2022 Proposal carried forward the requirement in existing AS 2310 to confirm accounts receivable. Similar to existing AS 2310, the 2022 Proposal did not specify the extent of confirmation procedures for accounts receivable. As noted above, the timing and extent of confirmation procedures are part of the auditor's response to the risks of material misstatement under PCAOB risk assessment standards. The 2022 Proposal instead required the auditor to take into account the auditor's understanding of the substance of the company's arrangements and transactions with third parties and the nature of the items that make up the company's account balances in selecting the individual accounts receivable to confirm. For example, an auditor might assess the risk of material misstatement relating to accounts receivable higher for a company that is being audited for the first time by the auditor, or for accounts receivable from a newly acquired operation in a foreign location.

The Board adopted the proposed requirements to confirm accounts receivable, with certain modifications discussed below.

Most commenters on this aspect of the 2022 Proposal generally supported the retention of a presumption to confirm accounts receivable, and most of those commenters stated that the requirement for the auditor to confirm accounts receivable was sufficiently clear and appropriate. Two investor-related groups stated that confirmation of cash and accounts receivable was necessary, in their view, to obtain persuasive, sufficient, and competent audit evidence.

On the other hand, a number of commenters, primarily firms and firm-related groups, expressed concerns about carrying forward the presumption for auditors to confirm accounts receivable from existing AS 2310. The common theme of those commenters was that requiring the auditor to use confirmation for certain accounts may not allow the auditor to exercise professional judgment in determining an appropriate response to the assessed risk of material misstatement for those accounts.

Regarding the selection of accounts receivable to confirm, several commenters agreed that the 2022 Proposal was sufficiently principles-based to allow auditors to use professional judgment in determining the extent of confirmation of accounts receivable.

The Board continues to believe that a presumption to confirm accounts receivable is appropriate to emphasize that audit evidence obtained from a knowledgeable external source is generally more reliable than evidence obtained only from internal company sources. Consistent with the objective of the new standard, the requirement to confirm cash and accounts receivable, or otherwise obtain relevant and reliable audit evidence by directly accessing information maintained by a knowledgeable external source, only applies when the auditor has determined that these accounts are significant accounts.

As with cash balances discussed above, the Board believes that when the auditor is able to perform other audit procedures to obtain audit evidence about accounts receivable by directly accessing information maintained by knowledgeable external sources (*e.g.,* information maintained by the receivable counterparty), such evidence would be at least as persuasive as audit evidence through confirmation procedures. The Board therefore added to the presumption to confirm cash and accounts receivable in the new standard the phrase ''or otherwise obtain relevant and reliable audit evidence by directly accessing information maintained by a knowledgeable external source.''

Audit evidence that an auditor obtains by accessing a third party's information directly can be at least as persuasive as audit evidence obtained through confirmation procedures because the auditor is able to observe first-hand the information providing such evidence. As technology continues to develop, The Board believes it is important for the new standard to reflect that there may be additional opportunities for the auditor to obtain audit evidence directly beyond sending a confirmation request. The new standard would allow for future innovations in audit techniques that might involve the auditor obtaining evidence for accounts receivable by directly accessing information maintained by a counterparty or other knowledgeable external source. As noted in the new standard, consistent with selecting a confirming party, when selecting the knowledgeable external source providing the auditor with access to information directly, the auditor would be required to consider whether the knowledgeable external source would have any incentive or pressure to provide the auditor with access to information directly that is inaccurate or otherwise misleading.

Situations where it would not be feasible for the auditor to obtain audit evidence for accounts receivable directly from a knowledgeable external source, through confirmation procedures or other means, are discussed below.

The Term ''Accounts Receivable''

The 2022 Proposal described ''accounts receivable'' as comprising receivables arising from the transfer of goods or services to a customer or from a financial institution's loans. Existing AS 2310 describes accounts receivable as the entity's claims against customers that have arisen from the sale of goods or services in the normal course of business, and a financial institution's loans. The 2022 Proposal was designed to apply to the same types of items as existing AS 2310, with a modified description to align more closely with the terminology of current accounting requirements, which have been updated since existing AS 2310 was written.[57]

[57] *See, e.g.,* FASB Accounting Standards Codification Topic 606, *Revenue from Contracts*

The Board adopted this provision as proposed.

Commenters on this aspect of the 2022 Proposal stated that the description of accounts receivable was clear. These commenters also noted that there was no need to further broaden the description to include additional types of receivables.

The description of accounts receivable in the new standard includes receivables that arise from the transfer of goods or services to a customer. These types of receivables generally arise from the company's ordinary revenue-generating activities, and include items for which revenue has been or will be recognized by a company, such as receivables from selling manufactured products or providing a service to customers. The description of accounts receivable also includes a financial institution's loans, including loans to customers that the institution has originated or purchased from another institution. Examples of financial institutions are banks, non-bank lenders, and mortgage companies that provide financing to customers.

Situations When Obtaining Audit Evidence for Accounts Receivable Directly Would Not Be Feasible

Performing Other Substantive Procedures, Including Tests of Details

In the 2022 Proposal, the presumption to confirm accounts receivable could be overcome when the auditor determined that an audit response that only included substantive audit procedures other than confirmation would provide audit evidence that is at least as persuasive as evidence the auditor might expect to obtain through performing confirmation procedures. The 2022 Proposal did not carry forward the provisions in existing AS 2310 addressing overcoming the presumption to confirm accounts receivable under certain conditions, which are (i) immateriality, (ii) ineffectiveness of confirmation, or (iii) a certain combination of the assessed risk and expected results from other auditing procedures.[58]

As discussed below, the new standard includes a provision to address situations when obtaining audit evidence directly from knowledgeable external sources, whether through confirmation procedures or other means, would not be feasible to execute.

Many commenters addressed the provision in the 2022 Proposal to overcome the presumption to confirm accounts receivable. A few commenters noted that the ability to overcome the presumption to confirm accounts receivable was clear and appropriate. As discussed below, many commenters focused on the proposed provision that evidence obtained through other substantive procedures should be ''at least as persuasive as'' evidence obtained through confirmation:

- A number of investor-related groups stated that the provision gave too much leeway to auditors to overcome the presumption to confirm accounts receivable. These commenters asserted that exceptions to confirming accounts receivable should only be available when other audit procedures would provide more persuasive or greater accumulated evidence than that obtained through confirmation. These commenters recommended additional requirements, such as allowing the auditor to overcome the presumption only if they document the evidence and basis for their conclusion and have communicated the conclusion to the audit committee and investors.
- Several firms and firm-related groups stated that the relevant provisions were not clear or more guidance would be needed about overcoming the presumption to confirm accounts receivable when other substantive procedures would be ''at least as persuasive as'' the evidence expected to be obtained through confirmation. A few commenters observed that the absence of a definition of the term ''persuasive'' in AS 1105 contributed to a lack of clarity as to the Board's expectations and requested more guidance about how to measure or evaluate persuasiveness. Several commenters emphasized that, rather than focus the requirement for overcoming the presumption to confirm accounts receivable on whether audit evidence obtained through audit procedures other than confirmation is ''at least as persuasive as'' evidence expected to be obtained through confirmation, the Board should focus the requirement on obtaining evidence that is sufficient and appropriate to address the assessed risk of material misstatement or, as one commenter suggested, on the reliability of the audit evidence.
- Several commenters suggested that the Board retain provisions similar to those in existing AS 2310.34 for allowing the auditor to overcome the presumption to confirm accounts receivable. In addition, several firms and firm-related groups suggested that the auditor's ability to overcome the presumption to confirm should be based on risk assessment, similar to the provision in existing AS 2310 addressing when the assessed level of inherent and control risk is low.
- Many firms and firm-related groups expressed concern that the criteria for overcoming the presumption would result in auditors having to use confirmation even in situations where historically confirmations were determined by the auditor to be ineffective and not to provide persuasive audit evidence.
- One commenter stated that, if the proposed language were adopted, auditors would likely default to confirming accounts receivable over other audit procedures to avoid second-guessing of their determinations of the persuasiveness of audit evidence.
- Several commenters, primarily firms and firm-related groups, stated that the 2022 Proposal imposed a higher threshold than the existing standard for auditors to overcome the presumption to confirm accounts receivable without a corresponding increase to audit quality.

As previously discussed, the new standard creates a presumption that the auditor performs confirmation procedures or otherwise obtains relevant and reliable audit evidence by directly accessing information maintained by a knowledgeable external source. Under PCAOB standards, in general, evidence obtained directly by the auditor from a knowledgeable external source is more reliable than evidence obtained indirectly.[59] However, the Board appreciates that there are instances where the auditor determines that performing confirmation procedures in response to a risk of material misstatement related to accounts receivable would not be feasible. For example, commenters described situations involving a history of low response rates to confirmation requests in certain industries (*e.g.,* healthcare, utilities), or where customers have been advised by a government agency to avoid providing personal or financial information in response to an unexpected request. The Board further understands that companies in other industries (*e.g.,* large retailers, defense and aerospace companies that contract with the federal government) do not, as a matter of policy, respond to confirmation requests. There may also be instances in which the performance of confirmation procedures would not result in reliable audit evidence.

Accordingly, paragraph .25 allows the auditor to perform other substantive procedures in response to a risk of

with Customers, and IFRS 15, *Revenue from Contracts with Customers.*

[58] *See* AS 2310.34.

[59] *See* AS 1105.08.

material misstatement, as long as such procedures include tests of details, if the auditor determines it is not feasible to obtain audit evidence directly from a knowledgeable external source pursuant to paragraph .24. Paragraph .25 specifically provides that the auditor's determination should be based on the auditor's experience, such as prior years' audit experience with the company or experience with similar engagements where the auditor did not receive confirmation responses, and the auditor's expectation of similar results if procedures were performed pursuant to paragraph .24. Any such determination would be performed as part of conducting the audit based on the available facts and circumstances at that time and properly supported in the audit documentation for the engagement.[60] In addition, as described below, for significant risks associated with accounts receivable, the auditor would be required to communicate with the audit committee when the auditor did not perform confirmation procedures or otherwise obtain audit evidence by directly accessing information maintained by a knowledgeable external source.

This provision replaces the concept in the 2022 Proposal about obtaining audit evidence that was ''at least as persuasive as'' the evidence expected to be obtained through confirmation procedures. It also specifies that the auditor should perform other substantive procedures, including tests of details, in these situations to make clear that performing only substantive analytical procedures would not be sufficient to overcome the presumption to confirm. These other substantive procedures should involve obtaining external information indirectly.

For accounts receivable, the auditor may be able to satisfy this requirement by obtaining information that is in the company's possession that the company received from one or more knowledgeable external sources.[61] Examples of such external information may include, for example, subsequent cash receipts, shipping documents from third-party carriers, customer purchase orders, or signed contracts and amendments thereto. This information may be in electronic form (*e.g.,* a purchase order initiated by a customer through a company's website) or in paper form (*e.g.,* a signed contract).

Conversely, when performing other substantive procedures under this provision, it would not satisfy the requirements of the new standard to use or rely solely on the company's internally produced information. For example, an audit procedure that involves an automated matching analysis of a company's revenue, accounts receivable, and cash journal entries recorded by the company would be insufficient on its own because such an analysis only involves the company's internally produced information. On the other hand, when such internally produced information is evaluated in conjunction with external information that the company received from a knowledgeable external source, such as checks that the company received directly from customers or information on subsequent cash receipts that the company received from a financial institution, the procedures would involve audit evidence from a knowledgeable external source.

Under existing PCAOB standards, the quantity of audit evidence needed is affected by its quality, including its reliability, and in general evidence obtained directly by the auditor is more reliable than evidence obtained indirectly. This applies to all information (including external information) used by the auditor in arriving at the conclusions on which the auditor's opinion is based. For example, as the quality of the evidence increases, the need for additional corroborating evidence decreases. The auditor should be mindful of these requirements when determining an appropriate audit response to a risk of material misstatement that involves obtaining external information indirectly under the new standard.

Further, when performing audit procedures that involve obtaining external information, the auditor should be mindful of other relevant PCAOB standards that address the documentation of the procedures performed and the relevance and reliability of the audit evidence obtained.[62] Audit documentation must clearly demonstrate the work performed by the auditor. In addition, the reliability of that audit evidence depends on the nature and source of the evidence and the circumstances under which it is obtained.

Communicating With the Audit Committee About the Auditor's Response to Significant Risks for Cash and Accounts Receivable

The 2022 Proposal included a requirement for the auditor to communicate to the audit committee[63] instances where the auditor had determined that the presumption to confirm accounts receivable had been overcome. In proposing that requirement, the Board considered the long-standing practice by auditors in the United States to confirm accounts receivable, and noted that a communication requirement when the presumption to confirm is overcome could enhance the audit committee's understanding of the auditor's strategy. In this regard, existing standards require the auditor to communicate to the audit committee about the auditor's overall audit strategy, significant risks identified during risk assessment procedures, significant changes to the planned audit strategy, and significant difficulties encountered during the audit.[64] Existing AS 2310 does not have a requirement to communicate to the audit committee about overcoming the presumption to confirm accounts receivable.

The new standard contains a requirement for the auditor to communicate with the audit committee about the auditor's response to significant risks associated with cash or accounts receivable when the auditor did not perform confirmation procedures or otherwise obtain audit evidence by directly accessing information maintained by a knowledgeable external source.

Several commenters, primarily investor-related groups, supported the proposed requirement in the 2022 Proposal that the auditor communicate to the audit committee when an auditor overcomes the presumption to confirm accounts receivable. One of the commenters referred to a statement in the 2022 Proposal that a requirement to communicate to the audit committee when overcoming the presumption to confirm accounts receivable ''may reinforce the auditor's obligation to exercise due professional care in making that determination.'' This commenter also noted that overcoming the presumption could result in a critical audit matter under AS 3101, *The Auditor's Report on an Audit of*

[60] *See* AS 1215.05.

[61] *See also Proposed Amendments Related to Aspects of Designing and Performing Audit Procedures that Involve Technology-Assisted Analysis of Information in Electronic Form,* PCAOB Rel. No. 2023–004 (June 26, 2023) (proposing amendments to PCAOB auditing standards to specify auditor responsibilities regarding certain company-provided information that the auditor uses as audit evidence, including information that the company received from external sources).

[62] *See e.g.,* AS 1215.05–.06 and AS 1105.07–.08.

[63] The term ''audit committee,'' as used in the new standard, has the same meaning as defined in Appendix A of AS 1301, *Communications with Audit Committees.*

[64] *See* AS 1301.09, .11, .23.

Financial Statements When the Auditor Expresses an Unqualified Opinion.[65]

Many commenters on this aspect of the 2022 Proposal, primarily firms and firm-related groups, disagreed with a specific requirement to communicate with the audit committee on this matter. These commenters asserted that such a requirement did not align with principles in AS 1301 to communicate with the audit committee about significant risks, including audit matters arising from the audit that are significant to the oversight of the company's financial reporting process. A number of these commenters also noted that, if there were a significant risk in accounts receivable or associated with a critical audit matter, the auditor would already be required to communicate these matters under AS 1301. Several other commenters indicated that they did not object to a more targeted requirement to communicate with the audit committee about overcoming the presumption to confirm when accounts receivable was assessed as a significant risk.

In addition, several commenters asserted that a requirement to communicate to the audit committee about overcoming the presumption to confirm would not improve audit quality, and could be detrimental if this communication became a compliance exercise for auditors, detracting them from performing effective audit procedures. A few commenters also stated there would not be a benefit to audit quality if the Board were to mandate that auditors treat instances of overcoming the presumption to confirm as a critical audit matter.

The 2022 Proposal stated that there may be some expectation by audit committees that the auditor would use confirmation as part of a planned audit response. One commenter encouraged the Board to perform outreach with audit committees to understand whether this expectation was, in fact, widespread and whether the proposed communication requirement would be relevant and meaningful.

Having considered the comments received, the Board does not believe it is necessary to require the auditor to inform the audit committee in every instance where the auditor performed substantive audit procedures other than confirmation to address the risk of material misstatement of cash or accounts receivable. However, the Board believes the auditor should inform the audit committee when the auditor did not perform confirmation procedures or otherwise obtain audit evidence by directly accessing information maintained by a knowledgeable external source when responding to significant risks associated with either cash or accounts receivable.

This targeted requirement is consistent with the views expressed by several commenters, as discussed above. It is also consistent with the existing obligation of auditors under PCAOB standards to communicate to the audit committee an overview of the overall audit strategy and to discuss with the audit committee the significant risks of material misstatement identified during the auditor's risk assessment procedures.[66] In addition, as with other matters arising from the audit of financial statements and communicated or required to be communicated to the audit committee, the auditor is required to determine whether these matters are critical audit matters in accordance with AS 3101.[67]

Confirming Terms of Certain Transactions

The 2022 Proposal provided that, for significant risks of material misstatement associated with either a complex transaction or a significant unusual transaction, the auditor should consider confirming terms of the transaction with the counterparty to the transaction. This provision updates a requirement in existing AS 2310.08 that the auditor should consider confirming the terms of certain transactions that are associated with high levels of risk. The 2022 Proposal used the terminology ''significant risk'' and ''significant unusual transactions,'' but the provision was intended to be similar to that in existing AS 2310.

The Board adopted the proposed requirements to consider confirming terms of certain transactions, with certain modifications discussed below.

Several commenters noted that the provision in the 2022 Proposal was sufficiently clear and appropriate. Other commenters suggested various modifications to the provision that they asserted would improve its clarity, such as elaborating on the meaning of the term ''complex transaction'' and stating that the provision applies when the assertions related to the significant risk of material misstatement can be adequately addressed through confirmation. Several commenters indicated that other audit procedures, not including confirmation, may adequately address an assessed significant risk over the existence assertion, such as obtaining and reviewing an original executed contract and verifying the execution of its terms over a period of time.

To provide additional clarity, the new standard provides that the auditor should consider confirming those terms of a complex transaction or significant unusual transaction that are associated with a significant risk of material misstatement, including a fraud risk. Under the new standard, examples of such terms may include terms relating to (i) oral side agreements, or undisclosed written or oral side agreements, where the auditor has reason to believe that such agreements exist, (ii) bill and hold sales, and (iii) supplier discounts or concessions. When such arrangements or agreements are part of a complex transaction or significant unusual transaction identified by the auditor, there may be a heightened risk that the transaction has been entered into to engage in fraudulent financial reporting or conceal misappropriation of assets. Likewise, a complex transaction or a significant unusual transaction could have a heightened risk of error whereby confirmation could lead to identification of an additional term that, under an accounting standard, might have accounting implications not previously recognized by either the company or the auditor. Accordingly, the auditor's confirmation of terms related to such arrangements or agreements may assist the auditor in evaluating the business purpose, or lack thereof, of the transaction.[68] These examples are not intended to be an exhaustive list. An auditor may identify other terms to confirm relating to a complex transaction or a significant unusual transaction if the auditor decides that confirmation could result in obtaining relevant and reliable audit evidence about that transaction.

One investor-related group recommended that the provision in the 2022 Proposal addressing the terms of complex transactions and significant unusual transactions should be mandatory and read ''should'' instead of ''should consider.'' In contrast, other commenters asserted that the provision was unduly prescriptive. Several commenters recommended that the Board change the phrase ''should consider'' to ''may consider'' to allow for more auditor judgment in

[65] A critical audit matter is defined in AS 3101.A2 as ''[a]ny matter arising from the audit of the financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the financial statements and (2) involved especially challenging, subjective, or complex auditor judgment.''

[66] *See* AS 1301.09.

[67] *See* AS 3101.11–.12.

[68] *See* AS 2401.67.

determining the audit procedures to perform to address significant unusual transactions or other complex transactions. The Board believes that the provision stating that the auditor ''should consider'' confirming terms of complex transactions or significant unusual transactions associated with a significant risk of material misstatement is sufficiently risk-based for the auditor to have flexibility in selecting the audit procedures that are best suited to address significant risks of material misstatement, depending on the facts and circumstances of individual transactions.

Another commenter suggested that the Board place additional emphasis on the auditor having a heightened degree of professional skepticism, similar to a provision in existing AS 2310.27, and that doing so would allow auditors to make appropriate judgments in determining whether facts and circumstances indicate that confirmation procedures may not produce sufficient appropriate evidence to address the assessed risks. The Board did not include additional language in the new standard about the auditor's potential need to exercise a heightened degree of professional skepticism related to confirmation because the auditor's obligation to apply professional skepticism is relevant to all aspects of the audit.[69]

Performing Alternative Procedures for Selected Items

(See paragraphs .C1–.C2 of the new standard).

The 2022 Proposal provided that the auditor should perform alternative procedures in certain scenarios involving identifying confirming parties or evaluating the reliability of confirmation responses, as well as in scenarios involving nonresponses and incomplete responses.[70] This range of scenarios was broader than under existing AS 2310, which provides that, with certain exceptions, the auditor should apply alternative procedures where the auditor has not received replies to positive confirmation requests. In addition, existing AS 2310 provides examples of alternative procedures, and requires the auditor to evaluate the combined evidence provided by confirmation and any alternative procedures and send additional confirmation requests or perform other audit tests, as needed, to obtain sufficient appropriate audit evidence.

The 2022 Proposal provided examples of alternative procedures that may provide relevant and reliable audit evidence regarding accounts receivable, accounts payable, and the terms of a transaction or agreement. These provisions expanded upon the examples of alternative procedures discussed in existing AS 2310.

The 2022 Proposal did not specify whether performing alternative procedures for the items the auditor was unable to confirm, alone or in combination with other audit procedures, is necessary to obtain sufficient appropriate audit evidence. Under the 2022 Proposal, the auditor would make that determination based on the facts and circumstances of the audit. Further, an auditor might determine that, without obtaining a reliable confirmation response, the auditor is unable to obtain sufficient appropriate audit evidence for a relevant assertion through performing alternative procedures for the items the auditor could not confirm, other audit procedures, or both (*e.g.,* if the auditor observes conditions during the confirmation process that indicate a heightened fraud risk). In such scenarios, the 2022 Proposal provided that the auditor would consider the impact on the audit opinion in accordance with AS 3105.

The 2022 Proposal also provided that performing alternative procedures may not be necessary where items selected for confirmation for which the auditor was not able to complete audit procedures would not—if misstated—change the outcome of the auditor's evaluation of the effect of uncorrected misstatements performed in accordance with AS 2810.17.[71] For example, following the direction in AS 2810.17, under the 2022 Proposal an auditor may have determined that an item that the auditor was unable to confirm would not be material individually or in combination with other misstatements. In such situations, the auditor would not have been required to perform alternative procedures.[72] Existing AS 2310 includes an analogous exception.

The Board adopted the requirements substantially as proposed, with certain modifications discussed below.

In the 2022 Proposal, the additional discussion of alternative procedures appeared in the main body of the proposed standard (paragraph .31). To enhance the readability of these provisions and facilitate their implementation, the Board has relocated them to Appendix C, which includes one paragraph that describes when performing other audit procedures may be necessary (paragraph .C1) and a second paragraph that provides further direction as to when alternative procedures are required under the new standard and includes examples of alternative procedures (paragraph .C2).

In addition, to remind auditors that the auditor's assessment of risks of material misstatement, including fraud risks, should continue throughout the audit, including the confirmation process, paragraph .C1 of the new standard states that, when the auditor is unable to obtain relevant and reliable audit evidence about the selected item through confirmation, the auditor should evaluate the implications for the auditor's assessment of the relevant risks of material misstatement, including fraud risks.

Several commenters indicated that the circumstances in the 2022 Proposal under which the auditor generally would be required to perform alternative procedures were sufficiently clear and appropriate. However, multiple commenters suggested that the Board include an example of an alternative procedure for cash. In consideration of these comments, the Board has incorporated an example of an alternative procedure that may provide relevant and reliable audit evidence regarding cash, which involves the auditor verifying information about the company's cash account maintained in a financial institution's information system by viewing this information directly on a secure website of the financial institution. In this example, the auditor might verify such information by determining the validity of the financial institution's website and viewing the information directly on the secure website. The information viewed by the auditor could be accessed either by the auditor, using login credentials provided by the company, or by company personnel. This additional example is intended to address some commenters' misperception that the 2022 Proposal would not allow the

[69] *See* AS 1015.07.

[70] *See* paragraphs .20 (inability to identify a confirming party), .26 (unreliable response), and .30 (nonresponse or incomplete response) of the proposed standard.

[71] The auditor's evaluation of materiality under AS 2810.17 takes into account both relevant quantitative and qualitative factors.

[72] In certain circumstances, auditors may have obligations independent of the Board's auditing standards to perform either confirmation procedures or other auditing procedures. *See, e.g.,* Section 30(g) of the Investment Company Act of 1940, 15 U.S.C. 80a–29(g) (providing that the auditor's report on the financial statements of a registered investment company ''shall state that such independent public accountants have verified securities owned, either by actual examination, or by receipt of a certificate from the custodian, as the Commission may prescribe by rules and regulations'').

auditor to perform alternative procedures in the event that a positive confirmation request related to cash does not result in a confirmation response.

Several commenters asserted that the note in the 2022 Proposal identifying situations where alternative procedures may not be necessary was not clear, with one commenter indicating that the analogous exception in existing AS 2310 was clearer because it addressed audit sampling. In consideration of these comments, the Board has revised the note to paragraph .C2 of the new standard to clarify how the exception from performing alternative procedures for selected items should be applied and revised the footnote in the paragraph to further explain how the exception is applied in scenarios involving audit sampling.

The following example further illustrates applying this provision in an audit: An auditor selects a sample of 50 accounts receivable invoices for confirmation and receives confirmation responses for 45 invoices that do not indicate a need for the auditor to perform alternative procedures. For two nonresponses, the auditor performs alternative procedures and obtains relevant and reliable audit evidence identifying no misstatements. For the three remaining nonresponses, the auditor does not perform alternative procedures because the auditor appropriately determines that, even if the amounts associated with the invoices were projected as 100 percent misstatements to the population from which the sample was selected and added to any other accounts receivable misstatements (*i.e.,* accounts receivable misstatements identified through audit procedures other than confirmation), the outcome of the auditor's evaluation performed in accordance with AS 2810.17 would not change.

Another commenter recommended that, for nonresponses, the Board require that the auditor ''must'' perform alternative procedures that include examining third-party evidence. This commenter also suggested that the Board revise the example of alternative procedures for accounts receivable by removing the phrase ''one or more,'' such that the auditor would perform all of the procedures identified in the example (*i.e.,* examining subsequent cash receipts, shipping documents, and other supporting documentation).

Having considered these comments, the Board believes that, with the modifications discussed above, the requirements in paragraph .C1 of the new standard provide appropriate direction regarding when alternative procedures are required. Additionally, the Board believes that including examples in paragraph .C2 of alternative procedures that may provide relevant and reliable audit evidence about selected items, without mandating specific procedures, is appropriate, as it is impracticable to describe specific procedures for all scenarios that could occur in an audit.

Additionally, as discussed above, the Board has modified paragraph .B2 of the new standard to provide that in circumstances where the auditor should not use an intermediary to send confirmation requests or receive confirmation responses, the auditor should send confirmation requests without the use of an intermediary or, if unable to do so, perform alternative procedures in accordance with Appendix C of the new standard. In light of this modification, the Board has added a reference to paragraph .B2 to Appendix C of the new standard.

Evaluating Results

(See paragraph .31 of the new standard).

The 2022 Proposal did not carry forward a requirement, included in existing AS 2310, for the auditor to evaluate in the aggregate audit evidence obtained from performing confirmation procedures and any alternative procedures. Excluding this requirement from the 2022 Proposal was intended to avoid the duplication of certain requirements of AS 2810 that discuss the auditor's responsibilities for evaluating audit results and determining whether the auditor has obtained sufficient appropriate audit evidence.

As discussed above, however, paragraph .24 of the new standard allows the auditor to perform audit procedures other than confirmation for cash and accounts receivable to obtain relevant and reliable audit evidence by directly accessing information maintained by a knowledgeable external source. The Board therefore decided to remind the auditor in paragraph .31 of the new standard that the auditor should evaluate the combined audit evidence provided by confirmation procedures, alternative procedures, and other procedures to determine whether sufficient appropriate audit evidence has been obtained in accordance with AS 2810.

Other Matters

This section addresses certain additional matters that were also discussed in the 2022 Proposal. In addition, this section discusses definitions included in the new standard and related amendments to PCAOB auditing standards.

Management Requests Not To Confirm

Consistent with existing AS 2310, the 2022 Proposal did not address, nor does the new standard address, situations in which management requests that the auditor not confirm one or more items.

Several commenters agreed with the approach in the 2022 Proposal and indicated that auditor responsibilities in such situations are already addressed by existing PCAOB standards. One commenter suggested that the Board consider adding a requirement that, if management requests an auditor not to confirm a certain item, the auditor should both request management to indicate the reason for the request and, as appropriate, consider whether the request is indicative of a risk of material misstatement. Another commenter agreed that the potential scope limitation or fraud risk from a management request not to confirm is addressed in other PCAOB standards, but expressed the view that including guidance in the new standard unique to confirmation would be appropriate. A different commenter did not suggest changes to the Board's approach, but observed that management requests not to confirm are primarily relevant in the financial services industry and that it had experienced infrequent management requests not to confirm in other industries.

Having considered the comments received, the Board believes that existing PCAOB standards appropriately address situations involving management requests not to confirm. In particular, AS 1301 requires that the auditor communicate to the audit committee disagreements with management [73] and difficulties encountered in performing the audit, including unreasonable management restrictions encountered by the auditor on the conduct of the audit (*e.g.,* an unreasonable restriction on confirming transactions or balances).[74] AS 3105 also sets forth requirements regarding limitations on the scope of an audit,[75] including scope limitations relating to confirmation.[76]

Further, AS 2110 and AS 2401 describe the auditor's responsibilities regarding identifying, assessing, and responding to fraud risks. For example, AS 2401.09 states that fraud may be concealed by withholding evidence. A management request to limit audit

[73] *See* AS 1301.22.

[74] *See* AS 1301.23.

[75] *See* AS 3105.05–.17.

[76] *See* AS 3105.07.

testing by not obtaining external audit evidence through confirmation could be relevant to the auditor's consideration of fraud risk factors, including the consideration of management incentives, opportunities, and rationalization for perpetrating fraud. Considering the applicability of existing provisions to situations involving management requests not to confirm, as discussed above, the Board believes that including analogous requirements in the new standard could lead to unnecessary duplication of existing requirements and potential confusion.

Restrictions and Disclaimers

The requirements in the proposed standard relating to the auditor's evaluation of the reliability of confirmation responses included a reminder, in the form of a footnote, of the auditor's responsibilities under AS 1105 as they relate to restrictions and disclaimers. A similar reminder does not exist in existing AS 2310.

The Board is including this reference to AS 1105.08 as proposed, in a footnote to paragraph .18 of the new standard. No comments were received on this aspect of the 2022 Proposal. In accordance with AS 1105.08, the auditor should evaluate the effect of restrictions, limitations, or disclaimers in confirmation responses on the reliability of audit evidence.[77]

Direct Access

The 2022 Proposal did not describe direct access as a confirmation procedure. Existing AS 2310 currently does not address such a procedure, but the 2010 Proposal had provided that direct access could be considered a confirmation procedure in certain circumstances.

A few commenters on the 2022 Proposal either agreed with, or indicated that they did not object to, the Board's stated position that direct access does not constitute a confirmation procedure. However, several firms and firm-related groups stated that, when properly executed, audit evidence obtained by the auditor through direct access can provide persuasive evidence about the existence of cash. One commenter recommended that the PCAOB consider aligning with the AICPA's position on this matter by acknowledging that the auditor's direct access to information held by a confirming party may meet the definition of a confirmation procedure when, for example, the confirming party provides the auditor with the electronic access codes or other information necessary to access a secure website where data that addresses the subject matter of the confirmation is held.

Having considered these comments, the Board adopted the new standard as proposed in relation to direct access.

While direct access does not constitute a confirmation procedure under the new standard, the new standard provides that the auditor may obtain relevant and reliable audit evidence by directly accessing information maintained by a knowledgeable external source, as discussed above.

Definitions

To operationalize the requirements included in the 2022 Proposal, the proposal included definitions for ''confirmation exception,'' ''confirmation process,'' ''confirmation request,'' ''confirmation response,'' ''confirming party,'' ''negative confirmation request,'' ''nonresponse,'' and ''positive confirmation request.''

The Board adopted the definitions as proposed, with certain modifications discussed below.

Several commenters stated that, in general, the definitions in the 2022 Proposal were sufficiently clear and appropriate. Other commenters either did not provide comments on the proposed definitions or suggested certain modifications, as discussed below.

Some commenters stated that the Board should modify the proposed definition of ''nonresponse'' to reflect that a nonresponse includes a situation where the auditor does not receive a confirmation response to a positive confirmation request directly from the intended confirming party. Having considered this comment, the Board is aligning the definition of ''nonresponse'' with the definition of ''confirmation response'' and the requirements of paragraph .16 of the new standard. This modification clarifies that a confirmation response that is not received directly from the confirming party would constitute a nonresponse. The Board has also modified the definition of ''negative confirmation request'' to use the defined term ''confirmation request'' rather than ''request.''

One commenter proposed modifications to the definitions of ''confirmation exception'' and ''confirmation process'' to specify that (i) sending a confirmation request may include transmitting the request in electronic form and (ii) only differences between a confirmation response and information the auditor obtained from the company that the auditor had originally sought to confirm constitute a confirmation exception. Having considered the comment, the Board notes that the proposed definition of ''confirmation process'' intentionally did not prescribe the method or methods by which confirmation requests can be sent and by which confirmation responses can be received, as the standard is intended to apply to all methods of sending and receiving confirmation requests and responses. Further, the Board believes that any instance where information in a confirmation response differs from information the auditor obtained from the company, even if the information in the confirmation response was not information that the auditor originally sought to confirm, should constitute a confirmation exception. Accordingly, the Board adopted the definition of ''confirmation exception'' as proposed and adopted the definition of ''confirmation process'' as proposed, with one modification to include ''selecting one or more items to be confirmed'' in the definition to align with the requirements specifically related to the confirmation process in the new standard.

The 2022 Proposal also indicated that an oral response to a confirmation request was a nonresponse. One commenter stated that a video recording of a call between an auditor and an individual at a confirming party ought not be considered less reliable audit evidence than a written response from an organization. Another commenter suggested that the PCAOB define the term ''confirmation'' because the 2022 Proposal stated that an oral response was a nonresponse but did not provide guidance as to whether other forms of response would be evidence of confirmation.

As the Board continues to believe that obtaining direct written communication, in paper or electronic form, from a confirming party is necessary for a response to constitute a confirmation response, the Board has not made further modifications to the definition in the new standard beyond those described above. Accordingly, a video recording of a call between an auditor and an individual at a confirming party or an oral response would constitute nonresponses under the new standard, although the auditor could still consider the relevance and reliability of the audit evidence provided by a video recording or an oral response when determining the nature and extent of alternative procedures required to be performed under the new standard.

[77] *See* AS 1105.08.

Amendments to Related PCAOB Auditing Standards

The Board adopted amendments to several existing PCAOB auditing standards to align with the new standard.

Amendments to AS 1105

(See paragraph .18 of AS 1105, as amended).

The 2022 Proposal included proposed amendments to AS 1105 to (i) align the description of a ''confirmation response'' in AS 1105 with the definition of the same term included in the 2022 Proposal and (ii) clarify that the terms ''confirmation response,'' ''confirmation request,'' and ''confirming party,'' as used in AS 1105, have the same meaning as defined in Appendix A of the 2022 Proposal.

The Board adopted the amendments as proposed.

Existing AS 1105.18 states that ''[a] confirmation response represents a particular form of audit evidence obtained by the auditor from a third party in accordance with PCAOB standards.'' The 2022 Proposal used the defined term ''confirming party'' in lieu of ''third party.'' One commenter suggested retaining the phrase ''third party'' in AS 1105.18 to provide further clarity. The Board is not using this term because the new standard describes a confirming party as ''a third party, whether an individual or an organization, to which the auditor sends a confirmation request,'' thus making it clear that a confirming party is a third party.

Another commenter suggested that the Board strike the word ''independent'' from AS 1105.08, which states that ''[e]vidence obtained from a knowledgeable source that is independent of the company is more reliable than evidence obtained only from internal company sources.'' This commenter asserted that, although confirmation evidence may be more reliable, it is not truly ''independent.'' The Board is not striking the word ''independent'' from AS 1105.08 as it believes the concept expressed in AS 1105.08 is well understood by auditors and does not purport to be a definitive statement about the ''independence'' of evidence from a confirming party.

Amendments to AS 1301

(See Appendix B to AS 1301, as amended).

The 2022 Proposal included a proposed requirement for the auditor to communicate to the audit committee instances in which the auditor has determined that the presumption to confirm accounts receivable has been overcome and the basis for the auditor's determination. The 2022 Proposal included a conforming amendment to AS 1301 that would refer to the proposed requirement.

The Board adopted the conforming amendment to AS 1301 that refers to the audit committee communication requirement contained in the new standard. The required communication with the audit committee about the auditor's response to significant risks associated with cash or accounts receivable when the auditor did not perform confirmation procedures or otherwise obtain audit evidence by directly accessing information maintained by a knowledgeable external source is discussed above.

Amendments to AS 2401

(See paragraphs .54 and .66A of AS 2401, as amended).

The 2022 Proposal included a proposed amendment to AS 2401 to refer to the title of the confirmation standard as proposed in the 2022 Proposal (*i.e.,* ''The Auditor's Use of Confirmation'').

The Board adopted the amendment as proposed and adopted an additional conforming amendment to AS 2401, as discussed below.

One commenter suggested that the Board consider a conforming amendment to AS 2401 to acknowledge a requirement in proposed paragraph .15 to consider confirming terms of the transaction for significant risks of material misstatement associated with either a complex transaction or significant unusual transaction. Having considered the comment, the Board adopted a conforming amendment to the note to AS 2401.66A to remind the auditor of the requirement in paragraph .30 of the new standard that for significant risks of material misstatement associated with either a complex transaction or a significant unusual transaction, the auditor should consider confirming those terms of the transaction that are associated with a significant risk of material misstatement, including a fraud risk.

Amendments to AS 2510

(See paragraph .14 of AS 2510, as amended).

AS 2510.14 includes a statement that ''if inventories are in the hands of public warehouses or other outside custodians, the auditor ordinarily would obtain direct confirmation in writing from the custodian.'' The 2022 Proposal included a proposed amendment to AS 2510 to remind auditors that AS 2310 establishes requirements for the auditor's use of confirmation.

The Board adopted the amendment as proposed.

One commenter stated that the Board should address the confirmation of inventory in the new standard instead of making conforming amendments to AS 2510. The Board continues to believe that including requirements related to inventory in a single standard is appropriate. However, the Board acknowledges that AS 2510.14 includes two requirements related to the confirmation of inventory. First, AS 2510.14 provides that ''[i]f inventories are in the hands of public warehouses or other outside custodians, the auditor ordinarily would obtain direct confirmation in writing from the custodian.'' Second, AS 2510.14 further states that the auditor should perform one or more of four additional procedures, as considered necessary by the auditor, if such inventories represent a significant proportion of current or total assets. One such procedure is to confirm pertinent details of pledged receipts with lenders (on a test basis, if appropriate), if warehouse receipts have been pledged as collateral. The Board has added a cross-reference to AS 2510 in footnote 4 of the new standard to clarify that AS 2510 also includes auditor responsibilities relevant to the auditor's use of confirmation.

Amendments to AS 2605

(See paragraphs .22 and .27 of AS 2605, as amended).

AS 2605.22 includes a statement that ''for certain assertions related to less material financial statement amounts where the risk of material misstatement or the degree of subjectivity in the valuation of the audit evidence is low, the auditor may decide, after considering the circumstances and the results of work (either test of controls or substantive tests) performed by internal auditors on those particular assertions, the audit risk has been reduced to an acceptable level and that testing of the assertions directly by the auditor may not be necessary.'' The paragraph then includes assertions about the existence of cash, prepaid assets, and fixed-asset additions as examples of assertions that might have a low risk of material misstatement or involve a low degree of subjectivity in the evaluation of audit evidence.

The 2022 Proposal included a proposed amendment to strike the word ''cash'' from AS 2605.22 to avoid confusion, as the 2022 Proposal required the auditor to perform

confirmation procedures in respect of cash.

In addition, the 2022 Proposal included a proposed amendment to acknowledge in paragraph .27 of AS 2605, which discusses using internal auditors to provide direct assistance to the auditor, the proposed restrictions on the use of internal audit in a direct assistance capacity in the confirmation process.

The Board adopted the amendments substantially as proposed, with certain modifications discussed below.

One commenter indicated that the proposed amendment to AS 2605.22 (*i.e.,* striking the word ''cash'' from the list of accounts that might have a low risk of material misstatement), inappropriately assumed that there is always a heightened risk of fraud related to cash accounts in all audit engagements. Having considered the comment, the Board notes that neither the 2022 Proposal nor the new standard suggests that there is heightened risk of fraud associated with cash in every engagement. However, the Board believes that where an auditor identifies a risk of material misstatement for cash (*i.e.,* where cash is a significant account) it is necessary for the auditor to perform confirmation procedures or otherwise obtain relevant and reliable audit evidence by directly accessing information maintained by a knowledgeable external source in respect of cash. Accordingly, the Board continues to believe that the conforming amendment to AS 2605.22 is appropriate.

Another commenter indicated that the proposed amendment to AS 2605.27 would not be necessary should the Board adopt the commenter's other recommendation to remove the proposed restrictions regarding the use of internal audit in the new standard. As discussed above, the Board continues to believe that in order to maintain control over the confirmation process the auditor should select items to be confirmed, send confirmation requests, and receive confirmation responses. The Board modified the conforming amendments to AS 2605.27, however, to align with paragraph .15 of the new standard.

Effective Date

The Board determined that the amendments will take effect, subject to approval by the SEC, for audits of financial statements for fiscal years ending on or after June 15, 2025.

As part of the 2022 Proposal, the Board sought comment on the amount of time auditors would need before the proposed standard and related amendments would become effective, if adopted by the Board and approved by the SEC. Many commenters, primarily firms and firm-related groups, supported an effective date of no earlier than two years after SEC approval, which some commenters indicated would give firms the necessary time to update firm methodologies and to develop and implement training. Additionally, as part of recommending an effective date no earlier than two years after SEC approval, a number of commenters observed that confirmation procedures are often performed as part of interim procedures and that, as a result, the new standard will impact engagement teams during the period under audit. Some commenters also stated that intermediaries involved in the confirmation process may also need to update their processes and controls as a result of the new standard. One commenter supported an effective date three years after SEC approval, while citing reasons similar to those expressed by commenters who supported an effective date of no earlier than two years after SEC approval.

The Board recognizes the preferences expressed by commenters. Nonetheless, having considered the requirements of the new standard, as well as the extent of differences between the new standard and AS 2310 and our understanding of firms' current practices, the Board believes that the effective date for fiscal years ending on or after June 15, 2025, will provide auditors with a reasonable period of time to implement the new standard and related amendments, without unduly delaying the intended benefits resulting from these improvements to PCAOB standards, and is consistent with the Board's mission to protect investors and protect the public interest.

D. Economic Considerations and Application to Audits of Emerging Growth Companies

The Board is mindful of the economic impacts of its standard setting. This section describes the economic baseline, need, and expected economic impacts of the new standard, as well as alternative approaches considered by the Board. Because there are limited data and research findings available to estimate quantitatively the economic impacts of the new standard, the economic analysis is largely qualitative in nature.

Baseline

Important components of the baseline against which the economic impact of the new standard can be considered are described above, including the Board's existing standard governing the audit confirmation process, firms' current practices when performing confirmation procedures, and observations from the Board's inspections program and enforcement cases. The Board discusses below two additional components that inform its understanding of the economic baseline: (i) the PCAOB staff's analysis of audit firm methodologies and the use of technology-based tools in the confirmation process, and (ii) a summary of academic and other literature on the confirmation process.

Auditing Practices Related to the Confirmation Process

Through its inspection and other oversight activities, the PCAOB has access to sources of information that help inform its understanding of how firms currently engage in the confirmation process. As part of this standard-setting project, the PCAOB staff has reviewed a selection of firms' audit methodologies, as well as other information about firms' use of technology-based tools when performing confirmation procedures. While this information is not a random sample that can be extrapolated accurately across all registered public accounting firms, the Board is able to make some general inferences that help inform development of the economic baseline.

PCAOB Staff Analysis of Audit Methodologies

PCAOB staff has reviewed the methodologies of selected registered public accounting firms to determine how they currently address the confirmation process and the extent to which changes to those methodologies will be necessary to implement the new standard. Specifically, the staff compared methodologies of selected global network firms (''GNFs'') [78] and some methodologies commonly used by U.S. non-affiliate firms (''NAFs''),[79] which are smaller than GNFs, to existing AS 2310 as well as to the new standard. The review focused on the following aspects of the new standard which represent more notable changes relative to existing AS 2310:

- Substantive procedures for confirming cash and cash equivalents (paragraphs .24, .26, and .29);

[78] GNFs are the member firms of the six global accounting firm networks (BDO International Ltd., Deloitte Touche Tohmatsu Ltd., Ernst & Young Global Ltd., Grant Thornton International Ltd., KPMG International Ltd., and PricewaterhouseCoopers International Ltd.).

[79] NAFs are both U.S. and non-U.S. accounting firms registered with the Board that are not GNFs. Some of the NAFs belong to international networks.

- Substantive procedures for confirming accounts receivable (paragraphs .24–.25 and .27);
- The auditor's use of negative confirmation requests (paragraphs .12–.13);
- Maintaining control over the confirmation process, including when an intermediary is used (paragraphs .14–.17 and .Appendix B); and
- Other areas addressed in the new standard, including the evaluation of the reliability of confirmation responses (paragraphs .18–.19), and the performance of alternative procedures (Appendix C).

For the GNF methodologies reviewed, PCAOB staff observed that the methodologies generally reflect requirements in existing AS 2310 and other auditing standards on external confirmation, such as ISA 505 and AU–C 505. In addition, some of the methodologies already incorporate certain concepts included in the new standard, although revisions to the methodologies will nonetheless be needed to implement the new standard.

Specifically, some GNF methodologies, but not all, include requirements for confirmation of cash and cash equivalents held by third parties similar to the new requirements described in the new standard. Other GNF methodologies suggest, but do not require, that engagement teams consider specific confirmation procedures for cash and cash equivalents held by third parties. GNF methodologies for confirmation of accounts receivable are generally consistent with existing AS 2310. Some also include guidance that is similar in certain respects to the requirements in the new standard when the auditor is unable to obtain relevant and reliable audit evidence through confirmation procedures. With respect to negative confirmation requests, GNF methodologies acknowledge that negative confirmation requests provide less persuasive evidence than positive confirmation requests. However, some GNF methodologies still allow the use of negative confirmation requests as the sole substantive procedure under certain conditions.[80]

The PCAOB staff also observed that GNF methodologies generally include guidance on maintaining control over the confirmation process, using intermediaries to facilitate the electronic transmission of confirmation requests, and assessing controls at the intermediaries. The firms' guidance in this area focuses on the performance of audit procedures to ensure that the electronic confirmation process occurs in a secure and controlled environment and that confirmation responses received are reliable. For example, the methodologies of some firms provide that an auditor may obtain a SOC report that would assist the engagement team in assessing the design and operating effectiveness of the intermediary's controls that address the risk of interception and alteration of confirmation requests and responses. Finally, although current GNF methodologies include guidance on the other areas being modernized or clarified in the new standard, GNFs may be required to make certain modifications to their methodologies to conform to the new standard, such as whether to perform alternative procedures.

For the NAF methodologies reviewed, the PCAOB staff observed that the methodologies generally align with existing AS 2310 across each of the areas studied, but include some guidance related to the new requirements in the new standard. For example, in some of the NAF methodologies, the confirmation of cash and cash equivalents held by third parties is a consideration but not a requirement. In other NAF methodologies, the confirmation of cash and cash equivalents held by third parties and negative confirmation requests are not discussed at all. NAF methodologies for confirmation of accounts receivable are generally consistent with existing AS 2310. Some include guidance that is similar in certain respects to the requirements described in the new standard when the auditor is unable to obtain relevant and reliable audit evidence through confirmation procedures.

The NAF methodologies also generally include guidance on maintaining control, using intermediaries in the confirmation process, and assessing controls at the intermediaries. Similar to GNF methodologies, NAF guidance in this area focuses on the performance of audit procedures to ensure that the electronic confirmation process occurs in a secure and controlled environment and that confirmation responses received are reliable. For example, a firm's methodology may provide that an auditor may obtain a SOC report that would assist the engagement team in assessing the design and operating effectiveness of the intermediary's controls that address the risk of interception and alteration of confirmation requests and responses.

Commenters on the 2022 Proposal did not provide additional information on firm methodologies beyond the staff's analysis. In general, the PCAOB staff's review indicates that all firms will likely need to revise their methodologies to some extent to implement the new standard. For example, all firms will need to update their methodologies to ensure that negative confirmation requests are not used as the sole source of audit evidence. NAF methodologies will likely require more revisions than the GNF methodologies, which have incorporated certain concepts included in the new standard.

Use of Technology-Based Tools

The PCAOB staff has also reviewed information collected through PCAOB oversight activities on firms' use of technology-based tools in the confirmation process. The staff's review focused primarily on the use of technology-based tools by GNFs, but also encompassed certain technology-based tools used by some NAFs. In addition, the review encompassed information on both proprietary technology-based tools that firms have developed internally and third-party or ''off-the-shelf'' tools that firms purchase and use (in certain cases, with further customizations) to assist in performing confirmation procedures as part of the audit process. The staff found that the number of technology-based tools used in the confirmation process varies across firms, and also varies based on the facts and circumstances of specific engagements. Generally speaking, firms allow engagement teams to select a tool but do not provide that the use of one or more tools is required.

Both GNFs and NAFs within the scope of the PCAOB staff's review use third-party tools to automate certain confirmation procedures, or to independently verify balances, terms of arrangements, or other information under audit. GNFs appear to be more likely to invest in customizing off-the-shelf tools they have purchased to their particular environment. For example, such modifications may permit a firm to automate the reconciliation of confirmed balances to client records. In comparison, NAFs tend to use the off-the-shelf tools without customization.

The PCAOB staff's review also found that GNFs have developed proprietary applications to facilitate various aspects of the confirmation process, whether conducted manually or electronically. These applications may facilitate the preparation of confirmation requests, their dissemination to recipients (including the preparation of logs to track confirmation requests and receipts), and the analysis of confirmation responses to determine

[80] *See* AS 2310.20 for these conditions.

their completeness and accuracy. GNFs have also developed tools used when auditing specific accounts, other than cash and accounts receivable, where confirmation may provide audit evidence. For example, tools are used to prepare, log, and track confirmation requests and responses for various deposit, loan, and liability accounts.

As discussed above, auditors or confirming parties may engage an intermediary to facilitate the direct electronic transmission of confirmation requests and responses between the auditor and the confirming party.[81] In one area, market forces have influenced firms' willingness to use an intermediary: a majority of financial institutions will only respond to confirmation requests through a centralized process and with a specified intermediary. As a result, all firms' methodologies required, and in practice firms did use, the specified intermediary in these circumstances.

The PCAOB staff has observed diverse practices related to the procedures auditors perform to support their reliance on an intermediary's controls when establishing direct communication between the auditor and the confirming party.[82] In some situations where the procedures performed included obtaining a SOC report, the staff has observed insufficient evaluation of SOC reports, lack of consideration of the period covered and complementary user entity controls, and insufficient coordination of procedures performed centrally by the audit firm and by the engagement team.[83]

These observations suggest that there may be a need for uniform guidance for situations involving the use of intermediaries. For example, enhanced procedures to be performed when auditors place reliance on an intermediary's controls could help address the risk of interception and alteration of communications between the auditor and the company and address the risk of override of the intermediary's controls by the company.

Commenters did not provide information about firms' use of technology-based tools that contradicted the staff's assessment. One commenter stated that some larger audit firms have established confirmation centers to centralize the sending and receiving of confirmation requests. Another commenter cited a study that noted the use of robotic process automation for confirming accounts receivable by a GNF.[84]

Literature on the Confirmation Process

There is limited data on auditor confirmation decisions and research findings on the confirmation process.[85] The literature documents that confirmation is ''extensively used'' and that confirmation responses received directly from a third party are often perceived by practitioners to be among ''the most persuasive forms of audit evidence.''[86] Consistent with the PCAOB staff's observations from PCAOB oversight activities,[87] studies find that the use of electronic confirmation has become prevalent.[88] One study also observes that current U.S. auditing standards do not fully address how auditors should authenticate confirmations sent or received electronically, and asserts that there is a need for audit guidance related to electronic forms of evidence.[89] Further, an earlier study reviews enforcement actions described in the SEC's Accounting and Auditing Enforcement Releases and concludes that additional direction regarding when cash and accounts receivable confirmation requests are required or recommended may be needed.[90] Additionally, the literature suggests that more guidance may be necessary to identify when the risk is sufficiently low to justify the use of negative confirmation requests in certain areas.[91] Moreover, an article on bank confirmation advocates a risk-based approach to the determination of confirmation procedures.[92] Finally, a study finds that ''anecdotal evidence and some research suggest confirmation response rates are declining.''[93] Commenters did not provide information contradicting the staff's summary of the relevant literature.

Accordingly, the academic literature is consistent with the conclusion that the Board's auditing requirements for the confirmation process should (i) accommodate electronic communications and address the implications of using an intermediary, (ii) address the confirmation of cash and accounts receivable, (iii) limit the use of negative confirmation requests, and (iv) align with the PCAOB's risk assessment standards.

Need

Several attributes of the audit market support a need for the PCAOB to establish effective audit performance standards. First, the company under audit, investors, and other financial statement users cannot easily observe the services performed by the auditor or the quality of the audit. This leads to a risk that, unbeknownst to the company, investors, or other financial statement users, the auditor may perform a low-quality audit.[94]

Second, the federal securities laws require that an issuer retain an auditor for the purpose of preparing or issuing an audit report. While the appointment, compensation, and oversight of the work of the registered public accounting

[81] *See Spotlight: Observations and Reminders on the Use of a Service Provider in the Confirmation Process* (Mar. 2022), available at *https://pcaobus.org/resources/staff-publications.*

[82] *Id.*

[83] *Id.*

[84] *See* Feiqi Huang and Milos A. Vasarhelyi, *Applying Robotic Process Automation (RPA) in Auditing: A Framework,* 35 Internal Journal of Accounting Information Systems 100433, 100436 (2019).

[85] *See* Paul Caster, Randal J. Elder, and Diane J. Janvrin, *A Summary of Research and Enforcement Release Evidence on Confirmation Use and Effectiveness,* 27 Auditing: A Journal of Practice & Theory 253, 254 (2008).

[86] *See id.* at 253.

[87] *See Spotlight: Data and Technology Research Project Update* (May 2021), available at *https://pcaobus.org/resources/staff-publications. See also Spotlight: Observations and Reminders on the Use of a Service Provider in the Confirmation Process* (Mar. 2022), available at *https://pcaobus.org/resources/staff-publications.*

[88] *See, e.g.,* Paul Caster, Randal J. Elder, and Diane J. Janvrin, *An Exploration of Bank Confirmation Process Automation: A Longitudinal Study,* 35 Journal of Information Systems 1, 5 (2021).

[89] *See id.* at 2.

[90] *See* Paul Caster, Randal J. Elder, and Diane J. Janvrin, *A Summary of Research and Enforcement Release Evidence on Confirmation Use and Effectiveness,* 27 Auditing: A Journal of Practice & Theory 253, 261–62 (2008).

[91] *See id.* at 266.

[92] *See* L. Ralph Piercy and Howard B. Levy, *To Confirm or Not to Confirm-Risk Assessment is the Answer,* 91 The CPA Journal 54, 54 (2021).

[93] *See* Paul Caster, Randal J. Elder, and Diane J. Janvrin, *A Summary of Research and Enforcement Release Evidence on Confirmation Use and Effectiveness,* 27 Auditing: A Journal of Practice & Theory 253, 254 (2008). The PCAOB staff has also observed that the use of electronic confirmation may affect the confirmation response rate. *See Spotlight: Data and Technology Research Project Update* (May 2021), *available at https://pcaobus.org/resources/staff-publications.*

[94] *See, e.g.,* Monika Causholli and Robert W. Knechel, *An Examination of the Credence Attributes of an Audit,* 26 Accounting Horizons 631, 632 (2012): During the audit process, the auditor is responsible for making decisions concerning risk assessment, total effort, labor allocation, and the timing and extent of audit procedures that will be implemented to reduce the residual risk of material misstatements. As a non-expert, the auditee may not be able to judge the appropriateness of such decisions. Moreover, the auditee may not be able to ascertain the extent to which the risk of material misstatement has been reduced even after the audit is completed. Thus, information asymmetry exists between the auditee and the auditor, the benefit of which accrues to the auditor. If such is the case, the auditor may have incentives to: Under-audit, or expend less audit effort than is required to reduce the uncertainty about misstatements in the auditee's financial statements to the level that is appropriate for the auditee.

firm conducting the audit is, under the Act, entrusted to the issuer's audit committee,[95] there is nonetheless a risk that the auditor may seek to satisfy the interests of the issuer audit client rather than the interests of investors and other financial statement users.[96] This risk can arise out of an audit committee's identification with the company or its management (*e.g.,* for compensation) or through management's exercise of influence over the audit committee's supervision of the auditor, which can result in a *de facto* principal-agent relationship between the company and the auditor.[97] Effective auditing standards help to address these risks by explicitly assigning responsibilities to the auditor that, if executed properly, are expected to lead to high-quality audits that satisfy the interests of audited companies, investors, and other financial statement users.

This section discusses the specific problem that the new standard is intended to address and explains how the new standard is expected to address it.

Problem To Be Addressed

Focus on Obtaining Reliable Audit Evidence From the Confirmation Process

In situations where audit evidence can be obtained from a knowledgeable external source, the resulting audit evidence is likely to be more reliable than audit evidence obtained only from internal company sources. For evidence obtained through confirmation to be reliable, the confirmation process must be properly executed. Proper execution involves assessing the reliability of a confirmation response and performing robust, additional alternative procedures when the auditor is unable to determine that a confirmation response is reliable. Similarly, proper execution may entail the performance of alternative procedures when the auditor is unable to identify a confirming party, the auditor does not receive a confirmation response from the intended confirming party, or the confirmation response is incomplete.

As discussed above, the PCAOB staff has observed situations where auditors did not perform procedures to assess the reliability of confirmation responses or, where applicable, perform sufficient alternative procedures.[98] In addition, the staff has noted that, in the case of some financial reporting frauds, the company's misconduct possibly could have been detected at an earlier point in time had the auditor made an appropriate assessment of the reliability of confirmation responses received, or performed additional procedures needed to obtain reliable audit evidence.[99] These observations suggest a need for enhancements to auditing standards to more clearly address those situations where confirmation can be expected to provide reliable audit evidence, including the requirements for evaluating the reliability of confirmation responses and, if appropriate, performing alternative procedures.

Developments in Practice

There are areas of the confirmation process where developments in practice have outpaced existing requirements in the Board's auditing standards. In particular, existing AS 2310 does not reflect significant changes in technology and the methods by which auditors perform the confirmation process, including the use of electronic communication and the involvement of third-party intermediaries.

Regulatory standards that do not reflect changes in practice may lead to inconsistency in their application, potential misinterpretation, and ineffective regulatory intervention. For example, the PCAOB staff has observed diverse practices and audit deficiencies related to the procedures performed by auditors to support their use of an intermediary to facilitate the electronic transmission of confirmation requests and confirmation responses with confirming parties.[100]

How the New Standard Addresses the Need

The new standard helps address the need by (i) strengthening requirements in certain areas to focus on the need to obtain reliable audit evidence from the confirmation process; and (ii) modernizing existing AS 2310 to accommodate certain developments in practice, including the use of electronic communications and intermediaries. The new standard is expected to promote consistent and effective practice relating to the confirmation process in audits subject to PCAOB standards, reducing the risk of low-quality audits caused by (i) the lack of observability of audit quality and (ii) the influence of the auditor-client relationship discussed above.

Focus on Obtaining Reliable Audit Evidence From the Confirmation Process

The new standard strengthens the Board's requirements in certain areas to focus on the need to obtain reliable audit evidence when executing the confirmation process. Specifically, the new standard includes a presumption for the auditor to confirm certain cash and cash equivalents held by third parties, or otherwise obtain relevant and reliable audit evidence by directly accessing information maintained by a knowledgeable external source. In addition, the new standard strengthens the requirements for evaluating the reliability of confirmation responses. It also continues to emphasize the importance of maintaining control over the confirmation process and provides additional examples of information that indicates that a confirmation request or response may have been intercepted and altered. When confirmation responses are deemed to be unreliable, the auditor is directed to perform alternative procedures to obtain audit evidence.

Moreover, as discussed above, electronic communications likely have reduced the efficacy of negative confirmation requests. Under the new standard, the auditor is not able to use negative confirmation requests as the sole substantive procedure for addressing the risk of material misstatement for a financial statement assertion.

Developments in Practice

Under the new standard, the requirement to maintain control over the confirmation process addresses both traditional and newer, more prevalent forms of communication between the auditor and confirming parties, including emailed confirmation requests and responses and intermediaries facilitating electronic communication of confirmation requests and responses. The new standard is intended to apply to methods of confirmation currently in

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[95] *See* Section 301 of the Act, 15 U.S.C. 78f(m). As an additional safeguard, the auditor is also required to be independent of the audit client. *See* 17 CFR 210.2–01.

[96] *See, e.g.,* Joshua Ronen, *Corporate Audits and How to Fix Them,* 24 Journal of Economic Perspectives 189 (2010).

[97] *See id.; see also, e.g.,* Liesbeth Bruynseels and Eddy Cardinaels, *The audit committee: Management watchdog or personal friend of the CEO?,* 89 The Accounting Review 113 (2014). Cory Cassell, Linda Myers, Roy Schmardebeck, and Jian Zhou, *The Monitoring Effectiveness of Co-Opted Audit Committees,* 35 Contemporary Accounting Research 1732 (2018); Nathan Berglund, Michelle Draeger, and Mikhail Sterin, *Management's Undue Influence over Audit Committee Members: Evidence from Auditor Reporting and Opinion Shopping,* 41 Auditing: A Journal of Practice 49 (2022).

[98] *See* above for observations from the PCAOB's audit inspections and from SEC enforcement cases.

[99] *See also* Diane Janvrin, Paul Caster, and Randy Elder, *Enforcement Release Evidence on The Audit Confirmation Process: Implications for Standard Setters,* 22 Research in Accounting Regulation 1, 10 (2010).

[100] *See Spotlight: Observations and Reminders on the Use of a Service Provider in the Confirmation Process* (Mar. 2022), available at *https://pcaobus.org/resources/staff-publications.*

use and to be flexible enough to apply to new methods that may arise from technological changes in auditing in the future.

The new standard emphasizes that in general, evidence obtained from a knowledgeable external source is more reliable than evidence obtained only from internal company sources. For cash and accounts receivable, if the auditor is able to perform audit procedures other than confirmation that allow the auditor to obtain audit evidence by directly accessing information maintained by knowledgeable external sources, such audit evidence could be as persuasive as audit evidence obtained through confirmation procedures, and the new standard allows the auditor to perform such procedures. Accordingly, to the extent that there are newer tools available to auditors now or in the future that enable them to obtain such audit evidence directly, the new standard would accommodate their use and future development.

Economic Impacts

This section discusses the expected benefits and costs of the new standard and potential unintended consequences. Overall, the Board expects that the economic impact of the new standard, including both benefits and costs, will be relatively modest, especially for those firms that have already incorporated into practice some of the new requirements. The Board also expects that the benefits of the new standard will justify the costs and any unintended negative effects.

Benefits

The Board expects the new standard to improve the consistency and effectiveness of the confirmation process, reducing the risk of low-quality audits caused by (i) the lack of observability of audit quality and (ii) the influence of the auditor-client relationship discussed above. Specifically, there exists a risk that, unbeknownst to the company under audit, investors, or other financial statement users, the auditor may perform a low-quality audit since audit quality is difficult to observe. In addition, some auditors may aim to satisfy the interests of the company or their own financial interests rather than the interests of investors and other financial statement users—interests that may lead them to perform insufficiently rigorous confirmation procedures to minimize the burden on clients and their counterparties to respond to confirmations, or to minimize audit costs.

The new standard helps to mitigate these risks in the audit confirmation process by strengthening and modernizing the requirements for the auditor regarding the design and execution of the confirmation process. Specifically, a confirmation process designed and executed under the new standard should benefit investors and other users of financial statements by reducing the likelihood that financial statements are materially misstated, whether due to error or fraud. Some commenters explicitly stated that the requirements described in the 2022 Proposal would improve the consistency of confirmation practices and enhance audit quality.

The enhanced quality of audits and financial information available to financial markets should also increase investor confidence in financial statements. In general, investors may use the more reliable financial information to improve the efficiency of their capital allocation decisions (*e.g.,* investors may reallocate capital from less profitable companies to more profitable companies). Investors may also perceive less risk in capital markets generally, leading to an increase in the supply of capital. An increase in the supply of capital could increase capital formation while also reducing the cost of capital to companies.[101]

Auditors also are expected to benefit from the new standard, because the additional clarity provided by the new standard (*e.g.,* the accommodation of current practices, including the use of electronic communications and intermediaries) will reduce regulatory uncertainty and the associated compliance costs. Specifically, the new standard provides auditors with a better understanding of their responsibilities and the Board's expectations.

The following discussion describes the benefits of key changes to existing confirmation requirements that are expected to impact auditor behavior. As discussed above, the changes aim to (1) enhance the auditor's focus on obtaining reliable audit evidence from the confirmation process, and (2) accommodate certain developments in practice. As further discussed below, the changes that enhance the auditor's focus on obtaining reliable audit evidence are expected to strengthen confirmation procedures for cash held by third parties, promote consistency in practice, improve the reliability of confirmation responses, improve the quality of audit evidence, and increase the auditor's likelihood of identifying potential financial statement fraud. The changes that accommodate developments in practice are expected to clarify the auditor's responsibilities regarding the use of electronic communications in the confirmation process, standardize the procedures that auditors perform to support their use of intermediaries, and allow for the use or development of more sophisticated and effective technology-based auditing tools. To the extent that a firm has already implemented certain of the provisions of the new standard into its firm methodology, the benefits described below will be reduced.

Focus on Obtaining Reliable Audit Evidence From the Confirmation Process

The new standard should benefit investors and other users of a company's financial statements by placing additional emphasis on the auditor's need to obtain reliable audit evidence when performing confirmation procedures. In this regard, the new standard: (1) identifies certain accounts for which the auditor should perform confirmation procedures, (2) enhances the requirements for assessing the reliability of confirmation responses, (3) addresses the performance of alternative procedures when the auditor is unable to obtain relevant and reliable audit evidence through confirmation, (4) strengthens requirements regarding the use of negative confirmation requests, and (5) specifies certain activities in the confirmation process that should be performed by the auditor and not by other parties.

Specifically, the new presumption for the auditor to confirm certain cash and cash equivalents held by third parties or otherwise obtain relevant and reliable audit evidence by directly accessing information maintained by a knowledgeable external source may reduce the risk of material errors in financial statements and strengthen investor protection to the extent that auditors are not already confirming cash pursuant to their existing audit methodologies.[102] This requirement also

[101] *See, e.g.,* Hanwen Chen, Jeff Zeyun Chen, Gerald J. Lobo, and Yanyan Wang, *Effects of audit quality on earnings management and cost of equity capital: Evidence from China,* 28 Contemporary Accounting Research 892, 921 (2011); Richard Lambert, Christian Leuz, and Robert E. Verrecchia, *Accounting Information, Disclosure, and the Cost of Capital,* 45 Journal of Accounting Research 385, 410 (2007).

[102] As discussed above, the PCAOB staff's review of firm methodologies indicated that some firms are already confirming cash balances, while other firms' methodologies do not require auditors to perform procedures beyond those required by AS 2310. The growth in corporate cash holdings also highlights the need to confirm cash and cash equivalents. *See, e.g.,* Kevin Amess, Sanjay Banerji,

specifies that the extent of audit evidence to obtain through cash confirmation procedures should be based on the auditor's understanding of the company's cash management and treasury function.

The standard does not require that all cash accounts or all accounts receivable should be selected for confirmation. The auditor's assessment of the risk of material misstatement is an important consideration when designing audit procedures, including the use of confirmation. Consistent with the objective of the new standard, the requirement to confirm cash and accounts receivable, or otherwise obtain relevant and reliable audit evidence by directly accessing information maintained by a knowledgeable external source, only applies when the auditor has determined that these accounts are significant accounts. Further, for both cash and accounts receivable, the new standard specifies that the auditor should take into account the auditor's understanding of the substance of a company's arrangements and transactions with third parties when selecting the individual items to confirm. These provisions in the new standard should encourage the auditor to determine the extent of confirmation procedures with regard to an assessment of the risk of material misstatement and avoid more work than necessary to obtain sufficient appropriate audit evidence.

However, to the extent that cash or accounts receivable fall within the scope of the new standard, the new standard strengthens the requirement to obtain relevant and reliable audit evidence, whether through performing confirmation procedures or otherwise obtaining audit evidence by directly accessing information maintained by a knowledgeable external source. At the same time, the new standard also addresses situations where, based on the auditor's experience, confirmation would not be feasible for accounts receivable. The additional clarity provided by these requirements in the new standard should reduce uncertainty in auditor responsibilities and promote consistency in practice with respect to the confirmation of cash and accounts receivable.

The new standard strengthens requirements addressing the reliability of confirmation responses by describing information that the auditor should take into account when evaluating the reliability of confirmation responses and providing examples of information that indicates that a confirmation request or response may have been intercepted or altered. These requirements are expected to improve the reliability of confirmation responses and therefore increase the quality of the audit evidence obtained by the auditor.

The requirement to communicate to the audit committee instances where, for significant risks associated with cash or accounts receivable, the auditor did not perform confirmation procedures or obtain audit evidence by directly accessing information maintained by a knowledgeable external source is expected to reinforce the auditor's obligation to exercise due professional care in determining not to perform confirmation procedures or otherwise obtain audit evidence by directly accessing information maintained by a knowledgeable external source.

The new standard also expands on the existing requirement to address the auditor's potential need to apply alternative procedures. The enhanced requirements for alternative procedures provide a greater level of detail and clarity to auditors for situations that are not currently addressed explicitly in existing AS 2310, potentially raising the quality of evidence obtained by auditors.

Under the new standard, the auditor may only use negative confirmation requests to supplement other substantive audit procedures; negative confirmation requests may not be used as the sole substantive audit procedure. As discussed above, the amount of electronic correspondence has increased dramatically over the years, leading to an increased likelihood that a negative confirmation request would not be appropriately considered by the confirming party and, therefore, would provide less persuasive audit evidence. The new standard addresses this issue by providing examples of situations in which negative confirmation requests, in combination with the performance of other substantive audit procedures, may provide sufficient appropriate audit evidence. As negative confirmation requests cannot be the sole source of audit evidence obtained, insofar as the new standard affects practice, the overall quality of audit evidence obtained by the auditor likely will increase.[103]

Overall, the additional requirements and examples discussed above are expected to improve the reliability of confirmation responses and, therefore, increase the quality of the audit evidence obtained by the auditor. By introducing a new requirement to confirm certain cash balances (or otherwise obtain relevant and reliable audit evidence by directly accessing information maintained by a knowledgeable external source) and enhancing the requirements for evaluating the reliability of confirmation responses, the new standard may also increase the auditor's likelihood of identifying potential financial statement fraud. Early detection of accounting fraud is an important aspect of investor protection because such fraud can cause significant harm to investors in the companies engaged in fraud, as well as indirect harm to investors in other companies.[104] In addition, by clarifying and strengthening the auditor's responsibilities, including by specifying additional situations where alternative procedures may be necessary and providing additional examples of information that indicates that a confirmation request or response may have been intercepted and altered, the new standard takes into account past inspection findings by the Board that auditors did not obtain sufficient appropriate audit evidence when using confirmation.

One commenter on the proposing release expressed the view that the proposed standard would not achieve a significant reduction in inspection findings or improvements to audit quality because adverse inspection findings have historically focused on a failure to appropriately execute existing requirements. As discussed above, however, the need for this rulemaking is not limited to noncompliance with the current standard detected through our inspections program, but also reflects undetected financial reporting frauds and developments in practice. The Board continues to believe, therefore, that the rule will achieve its intended benefits, which include increased clarity from the new standard.

Developments in Practice

The new standard modernizes existing AS 2310 by accommodating certain developments in practice,

and Athanasios Lampousis, *Corporate Cash Holdings: Causes and Consequences,* 42 International Review of Financial Analysis 421, 422 (2015).

[103] The Board understands through its oversight activities that few, if any, GNFs use negative confirmation requests as the sole substantive procedure in practice. As discussed above, however, the PCAOB staff's firm methodology review suggests that all the GNFs and NAFs reviewed will need to update their methodologies to ensure that negative confirmation requests are not used as the sole source of audit evidence.

[104] *See* Yang Bao, Bin Ke, Bin Li, Y. Julia Yu, and Jie Zhang, *Detecting Accounting Fraud in Publicly Traded US Firms Using a Machine Learning Approach,* 58 Journal of Accounting Research 199, 200 (2020).

including the use of electronic communications and intermediaries.

Specifically, the new standard accommodates changes in how communications occur between the auditor and confirming parties. It clarifies the auditor's responsibilities by taking into account current confirmation practices among auditors and acknowledging differing methods of confirmation. These methods include longstanding methods, such as the use of paper-based confirmation requests and responses sent via postal mail. They also include methods that have become commonplace since the existing standard was adopted, including confirmation requests and responses communicated via email and the use of intermediaries to facilitate the direct electronic transmission of confirmation requests and responses. This additional clarity may enhance the reliability of audit evidence by decreasing the risk that a confirmation request or response is intercepted and altered. In addition, the new standard includes requirements specific to an intermediary's controls that mitigate the risk of interception and alteration. The requirements are expected to standardize the procedures auditors perform to support their use of intermediaries and reduce audit deficiencies in this area.

With regard to both cash and accounts receivable, the new standard accommodates the potential for future evolution of audit tools by allowing auditors to directly obtain access to relevant and reliable audit evidence from knowledgeable external sources other than through confirmation without the involvement of the company. This change allows for the use or development of technology-based auditing tools, subject to the requirement that they provide audit evidence by directly accessing information maintained by knowledgeable external sources about the relevant financial statement assertion. Accordingly, this change could potentially improve the efficiency and effectiveness of the audit.

Some commenters on the 2022 Proposal questioned the benefits of the proposed requirements, arguing that the auditor's inability under the proposed standard to overcome the presumption to confirm cash and a high threshold to overcome the presumption to confirm accounts receivable unduly restricted the ability to use professional judgment to determine the appropriateness of confirmation procedures. While the Board agrees that professional judgment plays an important role in the execution of audit procedures, the Board's experience indicates that it is also important for investor protection that auditors obtain relevant and reliable audit evidence for both cash and accounts receivable when they are significant accounts. With regard to accounts receivable, the new standard retains the presumption to perform audit procedures to obtain relevant and reliable evidence through confirmation, or otherwise by directly accessing information maintained by a knowledgeable external source, so would not decrease or remove the auditor's current responsibility. Furthermore, the new standard includes a provision to address situations when obtaining audit evidence directly from knowledgeable external sources, whether through confirmation procedures or other means, would not be feasible to execute for accounts receivable. Accordingly, the new standard strikes a balance intended to benefit investors by recognizing the value of professional judgment generally with respect to the use of confirmation while ensuring that cash and accounts receivable, when they are significant accounts, are subject to confirmation or other audit procedures designed to obtain relevant and reliable audit evidence from knowledgeable external sources.

Costs

The Board expects the costs associated with the new standard to be relatively modest. The PCAOB staff's review of audit firm methodologies related to the confirmation process indicates that some firms have already incorporated into practice some of the new requirements. For example, the methodologies of some GNFs include requirements for confirmation of cash that are similar to the requirements in the new standard. Both the GNF and NAF methodologies reviewed generally include guidance on maintaining control over the confirmation process and the use of intermediaries to facilitate the electronic transmission of confirmation requests and responses.

To the extent that audit firms need to make changes to meet the new requirements, they may incur certain fixed costs (*i.e.,* costs that are generally independent of the number of audits performed) to implement the new standard. These include costs of updating audit methodologies and tools, and costs to prepare training materials and conduct internal training. GNFs are likely to update methodologies using internal resources, whereas NAFs are more likely to purchase updated methodologies from external vendors. The costs of updating these methodologies likely depend on the extent to which the new requirements have already been incorporated in the firms' current methodologies. For firms that have implemented confirmation procedures like those required by the new standard, the costs of updating methodologies may be lower than for firms that currently do not have such procedures. In this regard, large firms may also benefit from economies of scale. As mentioned above, one commenter indicated that some larger audit firms have already established confirmation centers to centrally process the sending of confirmation requests and receiving of confirmation responses. For these firms, costs to implement the new standard may be further diminished as these firms may benefit from lower training costs and more efficient performance of the enhanced procedures. Smaller audit firms may not have adequate resources to establish such confirmation centers and may not recognize similar efficiency gains. The commenter observed that the establishment of confirmation centers within audit firms would require significant resources, which smaller audit firms may not have.

In addition, audit firms may incur certain engagement-level variable costs related to implementing the new standard. For example, the requirement to confirm certain cash balances or otherwise obtain relevant and reliable audit evidence by directly accessing information maintained by a knowledgeable external source could impose engagement-level costs on some auditors if additional procedures need to be performed. Similarly, limiting the use of negative confirmation requests to situations where the auditor is also performing other substantive audit procedures could lead to additional time and effort by the auditor to perform the other audit procedures.

The magnitude of the variable costs likely depends on the extent to which existing practice differs from the new requirements. As discussed above, the PCAOB staff's review of firm methodologies, which included the methodologies of certain NAFs, suggests that the new standard likely will lead to a greater impact on confirmation procedures performed by smaller firms. Because the new standard generally applies a risk-based approach (*i.e.,* by providing that the use of confirmation may be part of the auditor's response to the assessed risks of material misstatement), the costs of performing the additional procedures are unlikely to be disproportionate to the benefits.

To the extent that auditors incur higher costs to implement the new standard and are able to pass on at least

part of the increased costs through an increase in audit fees, companies being audited could incur an indirect cost.[105] Moreover, confirming parties could incur additional costs from supporting the confirmation process as a result of the enhanced requirements of the new standard, although the additional costs are expected to be limited. One commenter agreed that confirming parties may incur additional costs as they may have to allocate resources to respond to confirmation requests. As discussed above, however, confirmation is already commonly used by audit firms, and the Board therefore does not expect confirming parties to incur significant additional costs to respond to confirmation requests as a result of the new standard.

Some requirements under the new standard may result in more costs than others. The following discussion describes the potential costs associated with specific changes to existing confirmation requirements.

Focus on Obtaining Reliable Audit Evidence From the Confirmation Process

The new standard: (1) identifies certain accounts for which the auditor should perform confirmation procedures or otherwise obtain relevant and reliable audit evidence by directly accessing information maintained by a knowledgeable external source, (2) enhances the requirements for assessing the reliability of confirmation responses, (3) addresses the performance of alternative procedures when the auditor is unable to obtain relevant and reliable audit evidence through confirmation, (4) strengthens requirements regarding the use of negative confirmation requests, and (5) specifies certain activities in the confirmation process that should be performed by the auditor and not by other parties.

For some firms, the requirement in the new standard to confirm certain cash balances or otherwise obtain relevant and reliable audit evidence by directly accessing information maintained by a knowledgeable external source could be expected to result in the revision of firm methodologies and the performance of additional audit procedures. As discussed above, the methodologies of some GNFs already include requirements for cash confirmation that are similar to the new requirement described in the new standard. In addition, the risk-based approach in the new requirement should encourage the auditor to determine the extent of confirmation with regard to an assessment of the risks of material misstatement and conduct only the work necessary to obtain sufficient audit evidence.

Commenters on the 2022 Proposal asserted that confirming cash balances under the proposed standard would lead to increased costs, given the lack of discretion and ability to overcome the presumption in the proposed standard. In addition, some commenters on the 2022 Proposal asserted that the ''at least as persuasive as'' threshold in the proposed standard for overcoming the presumption to confirm accounts receivable would limit the auditor's use of professional judgment and could result in greater costs without a commensurate benefit to audit quality.

As discussed above, there is a presumption in the new standard that the auditor should obtain audit evidence from a knowledgeable external source by performing confirmation procedures or using other means to obtain audit evidence by directly accessing information maintained by knowledgeable external sources. In addition, the new standard provides that if, based on the auditor's experience, it would not be feasible for the auditor to obtain audit evidence about accounts receivable pursuant to paragraph .24, the auditor should obtain external information indirectly by performing other substantive procedures, including tests of details. Insofar as the final standard does not otherwise provide auditors with the discretion to avoid obtaining audit evidence directly from a knowledgeable external source for cash, and the only exception applicable to accounts receivable is for situations where obtaining audit evidence directly from a knowledgeable external source would not be feasible, firms may, therefore, incur additional costs to comply with the presumptive requirements of the new standard for cash and accounts receivable. These costs, however, are necessary to the achievement of the standard's intended benefits of emphasizing the quality and strength of the audit evidence to be obtained from knowledgeable external sources.

The new standard also requires the auditor to evaluate the reliability of confirmation responses and provides examples of information that indicate that a confirmation response may have been intercepted and altered. The costs associated with this requirement, however, are expected to be limited. First, the Board's auditing standards already require the auditor to obtain sufficient appropriate audit evidence to provide a reasonable basis for the auditor's report, and to evaluate the combined evidence provided by confirmation and other auditing procedures performed when the auditor has not received replies to confirmation requests (*i.e.,* nonresponses) to determine whether sufficient evidence has been obtained about all the applicable financial statement assertions.[106] Second, the methodologies of some firms reflect application material in ISA 505 regarding factors (similar to indicators in the new standard) that may indicate doubts about the reliability of a confirmation response. One of these factors is analogous to the requirement in the new standard (*i.e.,* the confirmation response appears not to come from the originally intended confirming party), which may further limit the potential costs for firms that have incorporated this factor in their methodologies. One commenter on the 2022 Proposal stated that the proposed standard's requirement for evaluating the reliability of confirmation responses might cause the auditor to need to authenticate confirmation responses, which would add significant expense to the audit. However, as discussed above, AS 1105 already establishes the requirements for evaluating the reliability of audit evidence, and the new standard does not change those requirements.

The requirement for the auditor to communicate with the audit committee when the auditor did not perform confirmation procedures or otherwise obtain audit evidence by directly accessing information maintained by knowledgeable external sources for significant risks associated with either cash or accounts receivable could impose a modest incremental cost. Some commenters on the 2022 Proposal had expressed concern about the proposed requirement to communicate with the audit committee in all instances where the presumption to confirm accounts receivable had been overcome, which could be detrimental if the communication became a mere compliance exercise for auditors and audit committees. The new standard's requirement to communicate with the audit committee, however, is more risk-based and therefore, the Board continues to believe that the incremental costs will be modest.

[105] One commenter stated that the cost of audit would increase if auditors were required to send confirmations on any and all information that can be confirmed by external parties. While the Board notes that the new standard does not require confirmations on any and all information that can be confirmed, it agrees that companies being audited can incur indirect costs to the extent that auditors pass on at least part of the increased costs in terms of increased audit fees to companies.

[106] *See* AS 1105.04; AS 2310.33.

Insofar as the new standard identifies additional situations in which the auditor generally would be required to perform alternative procedures, firms may incur additional costs. Specifically, the new standard extends the requirement in existing AS 2310 to perform alternative procedures in relation to nonresponses to positive confirmation requests to other situations, including the auditor's inability to identify a confirming party and the receipt of an unreliable response.

In contrast with existing AS 2310, negative confirmation requests may not be used as the sole substantive audit procedure under the new standard. This limitation reflects, among other things, the increase in the volume of electronic correspondence since existing AS 2310 was issued and the increasing likelihood that a recipient of a negative confirmation request would not consider the request. As a result, auditors may have to perform other substantive audit procedures for certain financial statement assertions. Although the Board understands through its oversight activities that few, if any, GNFs use negative confirmation requests as the sole substantive procedure in practice, as discussed above, the PCAOB staff's firm methodology review suggests that all the GNFs and NAFs reviewed will need to review their methodologies to ensure that negative confirmation requests are not used as the sole source of audit evidence.

Developments in Practice

As discussed above, the new standard includes requirements that clarify the procedures auditors should perform to support their use of intermediaries to facilitate the direct electronic transmission of confirmation requests and responses between the auditor and the confirming party. These requirements may lead to modifications to firm methodologies. Further, the required procedures may involve additional auditor time and effort. The resulting costs likely depend on the extent to which the new requirements have already been incorporated in a firm's current methodologies. One commenter expressed concern that the proposed requirement to assess the intermediary's controls would result in significant additional work for auditors because it is not currently common practice to directly assess intermediaries in this manner. The PCAOB staff's review of firm methodologies discussed above did not suggest that the requirements in Appendix B of the new standard would create significant additional work for auditors. In particular, both the GNF and NAF methodologies reviewed generally already include guidance on maintaining control over the confirmation process and the use of intermediaries, which may limit the costs. In addition, the Board notes that the requirements in the new standard relate to relevant controls that address the risk of interception and alteration of confirmation requests and responses and that some intermediaries currently make information about relevant internal controls available to auditors through a SOC report.

If the auditor is able to obtain audit evidence by directly accessing information maintained by knowledgeable external sources instead of confirmation, such audit evidence could be at least as persuasive as audit evidence obtained through confirmation procedures, and the new standard allows the auditor to perform such procedures. This provision is not expected to impose new costs on firms, as firms would only obtain relevant and reliable audit evidence by directly accessing information maintained by a knowledgeable external source to the extent that technological advancements render it more efficient than performing confirmation procedures. Thus, to the extent that the auditor is able to replace confirmation procedures with obtaining audit evidence by directly accessing information maintained by a knowledgeable external source, the new standard could reduce costs for firms.

Potential Unintended Consequences

In addition to the benefits and costs discussed above, the new standard could have unintended economic impacts. The following discussion describes potential unintended consequences the Board has considered and, where applicable, factors that mitigate the negative consequences, such as steps the Board has taken or the existence of other countervailing forces.

Potential Decline in Auditors' Usage of Confirmation

An unintended consequence of the new standard would occur if, contrary to the Board's expectation, there were a significant reduction in the use of confirmation procedures by auditors in circumstances where confirmation would provide relevant and reliable audit evidence.

Under the new standard, auditors retain the ability to use confirmation as one procedure, among others, to audit one or more financial statement accounts or disclosures. At the same time, the new standard strengthens the requirements for an auditor regarding evaluating the reliability of confirmation responses and addressing confirmation exceptions and incomplete responses, including performing alternative procedures to obtain audit evidence. Further, the new standard describes the types of procedures the auditor should perform in evaluating the effect of using an intermediary on the reliability of confirmation requests and responses, including determining whether relevant controls of the intermediary are designed and operating effectively. In addition, the new standard does not allow the auditor to use negative confirmation requests as the sole substantive procedure. As a result, when not required to use confirmation, auditors might decline to use confirmation and use other audit procedures more frequently than under existing AS 2310 if they perceive there could be more time or cost involved in the confirmation process relative to the performance of other procedures.

This potential unintended consequence is mitigated, however, by the requirement that the auditor should perform confirmation procedures for cash and accounts receivable, or otherwise obtain audit evidence by directly accessing information maintained by knowledgeable external sources. In addition, the Board's standards already provide that the auditor should evaluate whether the combined evidence provided by confirmation and other auditing procedures provide sufficient evidence about the applicable financial statement assertions. Several of the changes to existing requirements in the new standard align with the Board's understanding of current practice. For example, many audit firms' methodologies include guidance on maintaining control and the use of intermediaries. Additionally, the potential unintended consequence may be mitigated to the extent that a firm has experienced efficiencies from using newer audit tools for confirmation through reduced time or costs. Further, the Board does not anticipate that the requirements of the new standard will cause a significant change in the timing or extent of confirmation procedures for auditors, as the Board has not amended the requirements of AS 2301, which is the auditing standard that addresses those matters. Accordingly, the Board does not believe that the new standard will lead to a significant decline in the use of confirmation.

Potential Misinterpretation of the Requirements in the New Standard Relating to the Confirmation of Cash and Accounts Receivable

An unintended consequence of the presumed requirement in the new standard to confirm cash and accounts receivable would arise if auditors misinterpreted the language in the new standard as requiring the confirmation of cash and accounts receivable in all situations. For example, the new standard does not carry forward a provision included in existing AS 2310 that an auditor could overcome the presumption to confirm accounts receivable if, among other things, ''[t]he use of confirmations would be ineffective.'' It is possible that some auditors might misinterpret the elimination of this language as precluding the exercise of auditor judgment with respect to the confirmation of accounts receivable. Some commenters on the 2022 Proposal appeared to misinterpret the proposed requirement and suggested that confirmation would be required in all situations. For example, one commenter asserted that using confirmation regardless of risk assessment may promote a checklist mentality that does not contribute to audit quality and an audit approach that may be less efficient and effective.

The Board does not intend, however, that an auditor send confirmation requests for accounts receivable in all situations or when such procedures do not provide relevant and reliable audit evidence. If the auditor has not determined cash or accounts receivable to be a significant account, the new standard does not require the confirmation of cash or accounts receivable. Moreover, to clarify the Board's intent, it has modified the language in the proposed standard in several respects. First, paragraph .25 of the new standard addresses situations when obtaining audit evidence about accounts receivable directly from knowledgeable external sources, whether through confirmation procedures or other means, would not be feasible to execute. If it is not feasible for the auditor to obtain audit evidence about accounts receivable directly from a knowledgeable external source, the auditor should obtain external information indirectly by performing other substantive procedures, including tests of details.

In addition, the Board is not adopting paragraph .07 of the proposed standard, which referred to situations where evidence obtained through the confirmation process ''generally is more persuasive than audit evidence obtained solely through other procedures'' and may have contributed to a misperception that the Board was proposing to require confirmation in all circumstances. In the Board's view, the language in the new standard acknowledges the role of professional judgment in the auditor's selection of audit procedures to obtain sufficient appropriate audit evidence, while retaining a presumption to confirm cash and accounts receivable or otherwise obtain relevant and reliable audit evidence by directly accessing information maintained by a knowledgeable external source. This should mitigate the potential unintended consequence described above.

Alternatives Considered

The development of the new standard involved considering a number of alternative approaches to address the problems described above. This section explains: (i) why standard setting is preferable to other policy-making approaches, such as providing interpretive guidance or enhancing inspection or enforcement efforts; (ii) other standard-setting approaches that were considered; and (iii) key policy choices made by the Board in determining the details of the new standard-setting approach.

Why Standard Setting Is Preferable to Other Policy-Making Approaches

The Board's policy tools include alternatives to standard setting, such as issuing additional interpretive guidance, or increasing our focus on inspections or enforcement of existing standards. The Board considered whether providing guidance or increasing inspection or enforcement efforts would be effective mechanisms to address concerns with the auditor's use of confirmation.

Interpretive guidance inherently provides additional information about existing standards. Inspection and enforcement actions take place after insufficient audit performance (and potential investor harm) has occurred. Devoting additional resources to interpretive guidance, inspections, or enforcement activities, without improving the relevant performance requirements for auditors, would at best focus auditors' performance on existing standards and would not provide the benefits discussed above associated with improving the standards. The new standard, on the other hand, is designed to improve existing requirements for the auditor's use of confirmation. For example, the new standard, unlike existing AS 2310, includes requirements relating to the confirmation of cash accounts, imposes additional limitations on the use of negative confirmation requests, clarifies the circumstances in which auditors would be expected to perform alternative procedures, and includes explicit provisions addressing the auditor's responsibility for selecting items to be confirmed, sending confirmation requests, and receiving confirmation responses.

Other Standard-Setting Alternatives Considered

Several alternative standard-setting approaches were also considered, including: (i) making amendments to the existing standard; and (ii) adopting an approach based on ISA 505, with certain modifications to reflect the PCAOB's statutory responsibilities with respect to audits of public companies and registered broker-dealers.

Amendments to Existing Standard

The Board considered, but decided against, limiting the amendments to AS 2310 solely to modifications relating to changes in technology that have affected the confirmation process. While this approach could result in fewer changes to firms' audit methodologies, the Board believes there are a number of other areas discussed throughout this release, beyond amending AS 2310 to reflect the increasing use of technology in the confirmation process, where the existing standard should be improved.

Standard Based on ISA 505

Some commenters on the 2009 Concept Release and the 2010 Proposal suggested that the Board should consider adopting ISA 505, the IAASB's standard on audit confirmation, which was issued in 2008. The Board has taken the requirements and application material of ISA 505 into account in developing the new standard (*e.g.,* the ISA 505 application material relating to the use of a third party to coordinate and provide responses to confirmation requests).

The Board concluded, however, that the new standard should also establish certain requirements that are not included in ISA 505 (*e.g.,* requirements to confirm cash and accounts receivable or otherwise obtain relevant and reliable audit evidence by directly accessing information maintained by a knowledgeable external source), and should not include certain provisions that are described in ISA 505 (*e.g.,* regarding management's refusal to allow the auditor to send a confirmation request). In addition, audit practices have continued to evolve since ISA 505

was issued in 2008, and the Board believes that the new standard should reflect these developments (*e.g.,* by addressing electronic communication and the use of intermediaries in the requirements of the standard rather than in application materials).

Key Policy Choices

Given a preference for replacing existing AS 2310 in its entirety, the Board considered different approaches to addressing key policy issues.

Use of Confirmation Procedures for Specific Accounts

The new standard provides that when addressing an assessed risk of material misstatement of cash and cash equivalents held by third parties, as well as of accounts receivable that arise from the transfer of goods or services to a customer or a financial institution's loans, the auditor should perform confirmation procedures or otherwise obtain relevant and reliable audit evidence by directly accessing information maintained by a knowledgeable external source. In addition, under the new standard, when obtaining audit evidence from a knowledgeable external source regarding cash, the auditor should consider sending confirmation requests to that source about other financial relationships with the company, based on the assessed risk of material misstatement. Also, when the auditor has identified a complex transaction or a significant unusual transaction, the auditor should consider confirming those terms of the transaction that are associated with a significant risk of material misstatement, including a fraud risk. The new standard does not specify other significant accounts or disclosures that the auditor should confirm or consider confirming. The Board considered several alternatives to this approach, as discussed below.

First, the Board considered an approach that would have no requirement for the auditor to confirm specified accounts or transactions. In the Board's view, this approach might result in the selection by some auditors of audit procedures that provide less relevant and reliable audit evidence than confirmation with respect to cash and accounts receivable (*e.g.,* if an auditor mistakenly assessed the risk of material misstatement too low for cash or accounts receivable). Further, confirmation of cash and accounts receivable is already a standard practice for many auditors and is consistent with the concept that audit evidence obtained from a knowledgeable external source is more reliable than evidence obtained only from internal company sources. Accordingly, the Board has decided against an approach that does not require the confirmation of any accounts and disclosures in the new standard.

In addition, the Board considered including in the new standard a requirement that the auditor should confirm other accounts in addition to cash and accounts receivable, such as investments. The Board has decided against this approach because it would limit auditor judgment in circumstances where the performance of other auditing procedures might provide relevant and reliable audit evidence, could be viewed as unduly prescriptive, and would not allow the auditor to take company-specific facts and circumstances into account. Instead, under the new standard, the auditor could decide to perform confirmation procedures with respect to financial statement assertions relating to other accounts and disclosures but is not required to do so.

The Board also considered an additional requirement that the auditor should perform confirmation procedures in response to significant risks that relate to relevant assertions, when such assertions can be adequately addressed by confirmation procedures. However, the Board believes that such a requirement would be inconsistent with the Board's risk assessment standards, which allow for auditor judgment in determining the audit response to significant risks identified by the auditor. The Board has not included this provision in the new standard.

Management Requests Not To Confirm

The Board considered addressing situations where management requests that the auditor not confirm one or more items in the new standard. Specifically, the Board considered requiring the auditor to obtain an understanding of the reasons for management's request, perform alternative procedures as discussed in Appendix C of the new standard, and communicate the request to the audit committee. In addition, the Board considered a requirement that the auditor should evaluate the implications for the auditor's report if the auditor determines that management's request impairs the auditor's ability to obtain sufficient appropriate audit evidence or indicates that one or more fraud risk factors are present. For the reasons discussed above, the Board has decided not to include such provisions in the new standard.

Special Considerations for Audits of Emerging Growth Companies

Pursuant to Section 104 of the Jumpstart Our Business Startups Act (''JOBS Act''), rules adopted by the Board subsequent to April 5, 2012, generally do not apply to the audits of EGCs, as defined in Section 3(a)(80) of the Exchange Act, unless the SEC ''determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors, and whether the action will promote efficiency, competition, and capital formation.'' [107] As a result of the JOBS Act, the rules and related amendments to PCAOB standards that the Board adopts are generally subject to a separate determination by the SEC regarding their applicability to audits of EGCs.

To inform consideration of the application of auditing standards to audits of EGCs, PCAOB staff prepares a white paper annually that provides general information about characteristics of EGCs.[108] As of the November 15, 2021, measurement date, PCAOB staff identified 3,092 companies that self-identified with the SEC as EGCs and filed audited financial statements in the 18 months preceding the measurement date.

Confirmation is a longstanding audit procedure used in nearly all audits, including audits of EGCs. The discussion of benefits, costs, and unintended consequences above is generally applicable to audits of EGCs. The economic impacts of the new standard on an EGC audit depend on factors such as the audit firm's current methodologies, the audit firm's ability to distribute implementation costs across engagements, and the auditor's assessed risk of material misstatement.

EGCs are likely to be newer companies, which may increase the importance to investors of the external audit to enhance the credibility of management disclosures.[109] Further,

[107] *See* Public Law 112–106 (Apr. 5, 2012). Section 103(a)(3)(C) of the Act, as added by Section 104 of the JOBS Act, also provides that any rules of the Board requiring (1) mandatory audit firm rotation or (2) a supplement to the auditor's report in which the auditor would be required to provide additional information about the audit and the financial statements of the issuer (auditor discussion and analysis) shall not apply to an audit of an EGC. The new standard does not fall within either of these two categories.

[108] For the most recent EGC report, *see White Paper on Characteristics of Emerging Growth Companies and Their Audit Firms at November 15, 2021* (Jan. 5, 2023) (''EGC White Paper''), available at *https://pcaobus.org/resources/other-research-projects.*

[109] Researchers have developed a number of proxies that are thought to be correlated with

compared to non-EGCs, EGCs are more likely to be audited by NAFs.[110] As discussed above, NAFs are expected to make more changes to their methodologies and practice to comply with the new standard. Therefore, all else equal, the benefits of the higher audit quality resulting from the new standard may be larger for EGCs than for non-EGCs, including improved efficiency of market capital allocation, lower cost of capital, and enhanced capital formation.[111] In particular, because investors who face uncertainty about the reliability of a company's financial statements may require a larger risk premium that increases the cost of capital to companies, the improved audit quality resulting from applying the new standard to EGC audits could reduce the cost of capital to those EGCs.[112]

While the associated costs may also be higher for EGC audits than for non-EGC audits, because of the scalability of the risk-based requirements, the costs of performing the procedures are unlikely to be disproportionate to the benefits of the procedures. Moreover, if any of the new amendments were determined not to apply to the audits of EGCs, auditors would need to address differing audit requirements in their methodologies, or policies and procedures, with respect to audits of EGCs and non-EGCs, which would create the potential for confusion. The new standard could impact competition in an EGC product market if the indirect costs to audited companies disproportionately impact EGCs relative to their competitors. However, as discussed above, the costs associated with the new standard are expected to be relatively modest. Therefore, the impact of the new standard on competition, if any, is expected to be limited. Overall, the new standard is expected to enhance audit quality and contribute to an increase in the credibility of financial reporting by EGCs.

Accordingly, and for the reasons explained above, the Board is requesting that the Commission determine that it is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation, to apply the new standard to audits of EGCs. One commenter specifically supported the application of the 2022 Proposal to EGCs.

III. Date of Effectiveness of the Proposed Rules 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 Board consents, the Commission will:

(A) By order approve or disapprove such proposed rules; or

(B) Institute proceedings to determine whether the proposed rules 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 rules are consistent with the requirements of Title I of 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/pcaob*); or
- Send an email to *rule-comments@sec.gov.* Please include file number PCAOB–2023–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number PCAOB–2023–02. 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/pcaob*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules that are filed with the Commission, and all written communications relating to the proposed rules between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the PCAOB. Do not include personal identifiable information in

information asymmetry, including small issuer size, lower analyst coverage, larger insider holdings, and higher research and development costs. To the extent that EGCs exhibit one or more of these properties, there may be a greater degree of information asymmetry for EGCs than for the broader population of companies, which increases the importance to investors of the external audit to enhance the credibility of management disclosures. *See, e.g.,* Mary E. Barth, Wayne R. Landsman, and Daniel J. Taylor, *The JOBS Act and Information Uncertainty in IPO Firms,* 92 The Accounting Review 25, 25 (2017); Steven A. Dennis and Ian G. Sharpe, *Firm Size Dependence in the Determinants of Bank Term Loan Maturity,* 32 Journal of Business Finance and Accounting 31, 59 (2005); Michael J. Brennan and Avanidhar Subrahmanyam, *Investment Analysis and Price Formation in Securities Markets,* 38 Journal of Financial Economics 361, 363 (1995); David Aboody and Baruch Lev, *Information Asymmetry, R&D, and Insider Gains,* 55 Journal of Finance 2747, 2755 (2000); Raymond Chiang and P. C. Venkatesh, *Insider Holdings and Perceptions of Information Asymmetry: A Note,* 43 Journal of Finance 1041, 1047 (1988); Molly Mercer, *How Do Investors Assess the Credibility of Management Disclosures?,* 18 Accounting Horizons 185, 194 (2004). Furthermore, research has shown that reduced disclosure requirements for EGCs are associated with lower audit effort. The academic literature has also documented evidence of lower audit quality for EGCs. To the extent that the new standard will increase auditor effort, EGCs are expected to benefit from higher audit quality. *See, e.g.,* Tiffany J. Westfall and Thomas C. Omer, *The Emerging Growth Company Status on IPO: Auditor Effort, Valuation, and Underpricing,* 37 Journal of Accounting and Public Policy 315, 316 (2018); Essam Elshafie, *The Impact of Reducing Reporting Requirements on Audit Quality, Auditor Effort and Auditor Conservatism,* 35 Accounting Research Journal 756, 756 (2022).

[110] EGC White Paper at 22.

[111] The enhanced quality of audits and financial information available to financial markets may result in investors perceiving less risk in capital markets. This, in turn, may lead to an increase in the supply of capital which could increase capital formation. *See, e.g.,* Hanwen Chen, Jeff Zeyun Chen, Gerald J. Lobo, and Yanyan Wang, *Effects of audit quality on earnings management and cost of equity capital: Evidence from China,* 28 Contemporary Accounting Research 892, 921 (2011); Richard Lambert, Christian Leuz, and Robert E. Verrecchia, *Accounting Information, Disclosure, and the Cost of Capital,* 45 Journal of Accounting Research 385, 410 (2007).

[112] For a discussion of how increasing reliable public information about a company can reduce risk premium, *see* David Easley and Maureen O'Hara, *Information and the Cost of Capital,* 59 The Journal of Finance 1553, 1578 (2004).

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 PCAOB–2023–02 and should be submitted on or before November 7, 2023.

[113] 17 CFR 200.30–11(b)(1) and (3).

For the Commission, by the Office of the Chief Accountant.[113]

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–22491 Filed 10–16–23; 8:45 am]

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