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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2022–0188]

RIN 3150–AK89

List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM 100 Cask System, Certificate of Compliance No. 1014, Renewed Amendment No. 17

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the Holtec International HI–STORM 100 Cask System listing within the ''List of approved spent fuel storage casks'' to include Renewed Amendment No. 17 to Certificate of Compliance No. 1014. Because this amendment is subsequent to the renewal of the HI–STORM 100 Cask System Certificate of Compliance No. 1014 and, therefore, subject to the Aging Management Program requirements of the renewed certificate, NRC is referring to it as ''Renewed Amendment No. 17.'' Renewed Amendment No. 17 updates the HI–STORM 100 Cask System description in the certificate of compliance to indicate that only the portions of the components that contact the pool water need to be made of stainless steel or aluminum. This amendment also includes minor editorial and formatting changes to the technical specifications that do not change the substantive technical information of the certificate of compliance.

DATES: This direct final rule is effective January 16, 2024, unless significant adverse comments are received by November 29, 2023. If this direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Comments received on this direct final rule will also be considered to be comments on a companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**.

ADDRESSES: Submit your comments, identified by Docket ID NRC–2022–0188, at *https://www.regulations.gov*. If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Kristina Banovac, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–7116, email: *Kristina.Banovac@nrc.gov*; and Irene Wu, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–1951, email: *Irene.Wu@nrc.gov*. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0188 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0188. Address questions about NRC dockets to Dawn Forder, telephone: 301–415–3407, email: *Dawn.Forder@nrc.gov*. For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov*. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays.

B. Submitting Comments

Please include Docket ID NRC–2022–0188 in your comment submission. The NRC requests that you submit comments through the Federal rulemaking website at *https://www.regulations.gov*. If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Rulemaking Procedure

This direct final rule is limited to the changes contained in Renewed Amendment No. 17 to Certificate of Compliance No. 1014 and does not include other aspects of the HI–STORM 100 Cask System design. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing certificate of compliance that is expected to be non-controversial. Adequate protection of public health and safety continues to be reasonably assured. The amendment to the rule will become effective on January 16, 2024. However, if the NRC receives any significant adverse comment on this direct final rule by November 29, 2023, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register** or as otherwise appropriate. In general, absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule, certificate of compliance, or technical specifications.

III. Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended, states that ''[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the Nuclear Waste Policy Act states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule that added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on May 1, 2000 (65 FR 25241) that approved the HI–STORM 100 Cask System design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance No. 1014.

IV. Discussion of Changes

On July 30, 2021, Holtec International submitted a request to the NRC to amend Certificate of Compliance No. 1014 for the HI–STORM 100 Cask System. Renewed Amendment No. 17 updates the HI–STORM 100 Cask System description in the certificate of compliance to indicate that only the portions of the components that contact the pool water need to be made of stainless steel or aluminum.

This amendment also includes minor editorial and formatting changes to the technical specifications that do not substantively change the technical information of the certificate of compliance. These changes are identified with revisions bars in the margin of each document.

As documented in the preliminary safety evaluation report, the NRC performed a safety evaluation of the proposed certificate of compliance amendment request. The NRC determined that this amendment does not reflect a significant change in design or fabrication of the cask. Specifically, the NRC determined that the design of the cask would continue to maintain confinement, shielding, and criticality control in the event of each evaluated accident condition. In addition, any resulting occupational exposure or offsite dose rates from the implementation of Renewed Amendment No. 17 would remain well within the limits specified by 10 CFR part 20, ''Standards for Protection Against Radiation.'' Therefore, the NRC found there will be no significant change in the types or amounts of any effluent released, no significant increase in the individual or cumulative radiation exposure, and no significant increase in the potential for or consequences from radiological accidents.

The NRC determined that the amended HI–STORM 100 Cask System design, when used under the conditions specified in the certificate of compliance, the technical specifications, and the NRC's regulations, will meet the requirements of 10 CFR part 72; therefore, adequate protection of public health and safety will continue to be reasonably assured. When this direct final rule becomes effective, persons who hold a general license under § 72.210 may, consistent with the license conditions under § 72.212, load spent nuclear fuel into HI–STORM 100 casks that meet the criteria of Renewed Amendment No. 17 to Certificate of Compliance No. 1014.

V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC revises the HI–STORM 100 Cask System design listed in § 72.214, ''List of approved spent fuel storage casks.'' This action does not constitute the

establishment of a standard that contains generally applicable requirements.

VI. Agreement State Compatibility

Under the ''Agreement State Program Policy Statement'' approved by the Commission on October 2, 2017, and published in the **Federal Register** on October 18, 2017 (82 FR 48535), this rule is classified as Compatibility Category NRC—Areas of Exclusive NRC Regulatory Authority. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of 10 CFR chapter I. Therefore, compatibility is not required for program elements in this category.

VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885).

VIII. Environmental Assessment and Finding of No Significant Impact

Under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' the NRC has determined that this direct final rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC has made a finding of no significant impact on the basis of this environmental assessment.

A. The Action

The action is to amend § 72.214 to revise the HI–STORM 100 Cask System listing within the ''List of approved spent fuel storage casks'' to include Renewed Amendment No. 17 to Certificate of Compliance No. 1014.

B. The Need for the Action

This direct final rule amends the certificate of compliance for the HI–STORM 100 Cask System design within the list of approved spent fuel storage casks to allow power reactor licensees to store spent fuel at reactor sites in casks with the approved modifications under a general license. Specifically, Renewed Amendment No. 17 revises the certificate of compliance to update the HI–STORM 100 Cask System description in the certificate of compliance to indicate that only the portions of the components that contact the pool water need to be made of stainless steel or aluminum. This amendment also includes minor editorial and formatting changes.

C. Environmental Impacts of the Action

On July 18,1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. The potential environmental impact of using NRC-approved storage casks was analyzed in the environmental assessment for the 1990 final rule. The environmental assessment for this Renewed Amendment No. 17 tiers off of the environmental assessment for the July 18, 1990, final rule. Tiering on past environmental assessments is a standard process under the National Environmental Policy Act of 1969, as amended.

The HI–STORM 100 Cask System is designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an independent spent fuel storage installation, the type of facility at which a holder of a power reactor operating license would store spent fuel in casks in accordance with 10 CFR part 72, can include tornado winds and tornado-generated missiles, a design basis earthquake, a design basis flood, an accidental cask drop, lightning effects, fire, explosions, and other incidents.

This amendment does not reflect a significant change in design or fabrication of the cask. Because there are no significant design or process changes, any resulting occupational exposure or offsite dose rates from the implementation of Renewed Amendment No. 17 would remain well within the 10 CFR part 20 limits. The NRC has also determined that the design of the cask as modified by this rule would maintain confinement, shielding, and criticality control in the event of an accident. Therefore, the proposed changes will not result in any radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule. There will be no significant change in the types or significant revisions in the amounts of any effluent released, no significant increase in the individual or cumulative radiation exposures, and no significant increase in the potential for, or consequences from, radiological accidents. The NRC documented its safety findings in the preliminary safety evaluation report.

D. Alternative to the Action

The alternative to this action is to deny approval of Renewed Amendment No. 17 and not issue the direct final rule. Consequently, any 10 CFR part 72 general licensee that seeks to load spent nuclear fuel into the HI–STORM 100 Cask System in accordance with the changes described in proposed Renewed Amendment No. 17 would have to request an exemption from the requirements of §§ 72.212 and 72.214. Under this alternative, interested licensees would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee. The environmental impacts would be the same as the proposed action.

E. Alternative Use of Resources

Approval of Renewed Amendment No. 17 to Certificate of Compliance No. 1014 would result in no irreversible commitment of resources.

F. Agencies and Persons Contacted

No agencies or persons outside the NRC were contacted in connection with the preparation of this environmental assessment.

G. Finding of No Significant Impact

The environmental impacts of the action have been reviewed under the requirements in the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in subpart A of 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.'' Based on the foregoing environmental assessment, the NRC concludes that this direct final rule, ''List of Approved Spent Fuel Storage Casks: HI–STORM 100 Cask System, Certificate of Compliance No. 1014, Renewed Amendment No. 17,'' will not have a significant effect on the human environment. Therefore, the NRC has determined that an environmental impact statement is not necessary for this direct final rule.

IX. Paperwork Reduction Act Statement

This direct final rule does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501

et seq.). Existing collections of information were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid Office of Management and Budget control number.

X. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this direct final rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and Holtec International. These entities do not fall within the scope of the definition of small entities set forth in the Regulatory Flexibility Act or the size standards established by the NRC (§ 2.810).

XI. Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if (1) it notifies the NRC in advance; (2) the spent fuel is stored under the conditions specified in the cask's certificate of compliance; and (3) the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On May 1, 2000, (65 FR 25241) the NRC issued an amendment to 10 CFR part 72 that approved the HI–STORM 100 Cask System by adding it to the list of NRC-approved cask designs in § 72.214.

On July 30, 2021, Holtec International submitted a request to amend the HI–STORM 100 Cask System as described in Section IV, ''Discussion of Changes,'' of this document.

The alternative to this action is to withhold approval of Renewed Amendment No. 17 and to require any 10 CFR part 72 general licensee seeking to load spent nuclear fuel into the HI–STORM 100 Cask System under the changes described in Renewed Amendment No. 17 to request an exemption from the requirements of §§ 72.212 and 72.214. Under this alternative, each interested 10 CFR part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

Approval of this direct final rule is consistent with previous NRC actions. Further, as documented in the preliminary safety evaluation report and environmental assessment, this direct final rule will have no adverse effect on public health and safety or the environment. This direct final rule has no significant identifiable impact or benefit on other government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of this direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory; therefore, this action is recommended.

XII. Backfitting and Issue Finality

The NRC has determined that the backfit rule (§ 72.62) does not apply to this direct final rule. Therefore, a backfit analysis is not required. This direct final rule revises Certificate of Compliance No. 1014 for the HI–STORM 100 Cask System, as currently listed in § 72.214. The revision consists of the changes in Renewed Amendment No. 17 previously described, as set forth in the revised certificate of compliance and technical specifications.

Renewed Amendment No. 17 to Certificate of Compliance No. 1014 for the HI–STORM 100 Cask System was initiated by Holtec International and was not submitted in response to new NRC requirements, or an NRC request for amendment. Renewed Amendment No. 17 applies only to new casks fabricated and used under Renewed Amendment No. 17. These changes do not affect existing users of the HI–STORM 100 Cask System, and the current Renewed Amendment No. 15 continues to be effective for existing users. While current users of this storage system may comply with the new requirements in Renewed Amendment No. 17, this would be a voluntary decision on the part of current users.

For these reasons, Renewed Amendment No. 17 to Certificate of Compliance No. 1014 does not constitute backfitting under § 72.62 or § 50.109(a)(1), or otherwise represent an inconsistency with the issue finality provisions applicable to combined licenses in 10 CFR part 52. Accordingly, the NRC has not prepared a backfit analysis for this rulemaking.

XIII. Congressional Review Act

This direct final rule is not a rule as defined in the Congressional Review Act.

XIV. Availability of Documents

The documents identified in the following table are available to interested persons as indicated.

Document	ADAMS Accession No./ **Federal Register** citation
Holtec International, Submittal of Application for Amendment 17 to HI–STORM 100 Cask System Certificate of Compliance No. 1014, dated July 30, 2021.	ML21211A603 (package).
User Need Memorandum for Amendment No. 17 to HI–STORM 100 Cask System, dated August 23, 2022	ML22175A087.
Corrected User Need Memorandum for Amendment No. 17 to HI–STORM 100 Cask System, dated December 19, 2022.	ML22313A038.
Proposed Certificate of Compliance No. 1014, Amendment No. 17	ML22175A085.
Preliminary Safety Evaluation Report for the HI–STORM 100 Cask System: Certificate of Compliance No. 1014, Amendment No. 17.	ML22175A086.
Proposed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 17.	ML22175A079.
Proposed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 17.	ML22175A080.
Proposed Certificate of Compliance No. 1014 Appendix C: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 17.	ML22175A081.
Proposed Certificate of Compliance No. 1014 Appendix D: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 17.	ML22175A082.
Proposed Certificate of Compliance No. 1014 Appendix A–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 17.	ML22175A083.

Document	ADAMS Accession No./ **Federal Register** citation
Proposed Certificate of Compliance No. 1014 Appendix B–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 17.	ML22175A084.
Final Rule, ''Storage of Spent Fuel in NRC-Approved Storage Casks at Power Reactor Sites,'' published July 18, 1990.	55 FR 29181.
Final Rule, ''List of Approved Spent Fuel Storage Casks: Holtec HI–STORM 100 Addition,'' published May 1, 2000	65 FR 25241.
Revision to Policy Statement, ''Agreement State Program Policy Statement; Correction,'' published October 18, 2017.	82 FR 48535.
Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998	63 FR 31885.

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2022–0188. In addition, the Federal rulemaking website allows members of the public to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) navigate to the docket folder (NRC–2022–0188); (2) click the ''Subscribe'' link; and (3) enter an email address and click on the ''Subscribe'' link.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Indians, Intergovernmental relations, Nuclear energy, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

■ 2. In § 72.214, revise Certificate of Compliance No. 1014 to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1014.

Initial Certificate Effective Date: May 31, 2000, superseded by Renewed Initial Certificate Effective Date: August 2, 2023.

Amendment Number 1 Effective Date: July 15, 2002, superseded by Renewed Amendment Number 1 Effective Date: August 2, 2023.

Amendment Number 2 Effective Date: June 7, 2005, superseded by Renewed Amendment Number 2 Effective Date: August 2, 2023.

Amendment Number 3 Effective Date: May 29, 2007, superseded by Renewed Amendment Number 3 Effective Date: August 2, 2023.

Amendment Number 4 Effective Date: January 8, 2008, superseded by Renewed Amendment Number 4 Effective Date: August 2, 2023.

Amendment Number 5 Effective Date: July 14, 2008, superseded by Renewed Amendment Number 5 Effective Date: August 2, 2023.

Amendment Number 6 Effective Date: August 17, 2009, superseded by Renewed Amendment Number 6 Effective Date: August 2, 2023.

Amendment Number 7 Effective Date: December 28, 2009, superseded by Renewed Amendment Number 7 Effective Date: August 2, 2023.

Amendment Number 8 Effective Date: May 2, 2012, as corrected on November 16, 2012 (ADAMS Accession No. ML12213A170); superseded by Amendment Number 8, Revision 1, Effective Date: February 16, 2016; superseded by Renewed Amendment Number 8, Revision 1 Effective Date: August 2, 2023.

Amendment Number 9 Effective Date: March 11, 2014, superseded by Amendment Number 9, Revision 1, Effective Date: March 21, 2016, as corrected on August 25, 2017 (ADAMS Accession No. ML17236A451); superseded by Renewed Amendment Number 9, Revision 1 Effective Date: August 2, 2023.

Amendment Number 10 Effective Date: May 31, 2016, as corrected on August 25, 2017 (ADAMS Accession No. ML17236A452); superseded by Renewed Amendment Number 10 Effective Date: August 2, 2023.

Amendment Number 11 Effective Date: February 25, 2019, as corrected (ADAMS Accession No. ML19343B024); superseded by Renewed Amendment Number 11 Effective Date: August 2, 2023.

Amendment Number 12 Effective Date: February 25, 2019, as corrected on May 30, 2019 (ADAMS Accession No. ML19109A111); further corrected December 23, 2019 (ADAMS Accession No. ML19343A908); superseded by Renewed Amendment Number 12 Effective Date: August 2, 2023.

Amendment Number 13 Effective Date: May 13, 2019, as corrected on May 30, 2019 (ADAMS Accession No. ML19109A122); further corrected December 23, 2019 (ADAMS Accession No. ML19343B156); superseded by Renewed Amendment Number 13 Effective Date: August 2, 2023.

Amendment Number 14 Effective Date: December 17, 2019, as corrected (ADAMS Accession No. ML19343B287); superseded by Renewed Amendment Number 14 Effective Date: August 2, 2023.

Amendment Number 15 Effective Date: June 14, 2021, superseded by Renewed Amendment Number 15 Effective Date: August 2, 2023.

Renewed Amendment Number 16 [Reserved].

Renewed Amendment Number 17 Effective Date: January 16, 2024.

Safety Analysis Report (SAR) Submitted by: Holtec International.

SAR Title: Final Safety Analysis Report for the HI–STORM 100 Cask System.

Docket Number: 72–1014.

Certificate Expiration Date: May 31, 2020.

Renewed Certificate Expiration Date: May 31, 2060.

Model Number: HI–STORM 100.

* * * * *

Dated: October 11, 2023.

For the Nuclear Regulatory Commission.

Catherine Haney,

Acting Executive Director for Operations.

[FR Doc. 2023–23453 Filed 10–27–23; 8:45 am]

BILLING CODE 7590–01–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 comment; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that was published in the **Federal Register**. That AD applies to certain International Aero Engines, LLC (IAE LLC) Model PW1124G1–JM, PW1127G–JM, PW1127GA–JM, PW1129G–JM, PW1130G–JM, PW1133G–JM, and PW1133GA–JM engines. As published, a part number was inadvertently excluded in the regulatory text of the AD. This document corrects that error. In all other respects, the original document remains the same.

DATES: This correction is effective November 1, 2023. The effective date of AD 2023–20–11 remains November 1, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 1, 2023 (88 FR 71466, October 17, 2023).

The date for submitting comments on AD 2023–20–11 remains 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; request for comment; correction, 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 referenced 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

AD 2023–20–11, Amendment 39–22570 (88 FR 71466, October 17, 2023), requires replacement of the high-pressure compressor (HPC) rear hub with a part eligible for installation for certain IAE LLC Model PW1124G1–JM, PW1127G–JM, PW1127GA–JM, PW1129G–JM, PW1130G–JM, PW1133G–JM, and PW1133GA–JM engines.

Need for Correction

As published, paragraph (c) in the regulatory text of AD 2023–20–11 is incorrect. Paragraph (c) of AD 2023–20–11 refers to part number ''30G4008.'' The correct reference is part number ''30G4008 or 30G8208.''

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**.

Correction of Publication

This document corrects an error and correctly adds the AD as an amendment to 14 CFR 39.13. Although no other part of the preamble or regulatory information has been corrected, the FAA is publishing the entire rule in the **Federal Register**.

The effective date of this AD remains November 1, 2023.

Since this action only corrects the mention of an affected part number, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public comment procedures are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (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 [Corrected]

■ 2. The FAA amends § 39.13 by adding the following 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 or 30G8208, 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 this 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 material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email: *fr.inspection@nara.gov.*

Issued on October 25, 2023.

Caitlin Locke,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–23929 Filed 10–26–23; 11:15 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Fees for Reviews of the Rule Enforcement Programs of Designated Contract Markets and Registered Futures Associations

AGENCY: Commodity Futures Trading Commission.

ACTION: Notification of 2022 schedule of fees.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') charges fees to designated contract markets and registered futures associations to recover the costs incurred by the Commission in the operation of its program of oversight of self-regulatory organization rule enforcement programs, specifically the National Futures Association (''NFA''), a registered futures association, and the designated contract markets. Fees collected from each self-regulatory organization are deposited in the Treasury of the United States as miscellaneous receipts. The calculation of the fee amounts charged for 2022 by this document is based upon an average of actual program costs incurred during fiscal year (''FY'') 2019, FY 2020, and FY 2021.

DATES: Each self-regulatory organization is required to electronically remit the

applicable fee on or before December 29, 2023.

FOR FURTHER INFORMATION CONTACT: Joel Mattingley, Chief Financial Officer, Commodity Futures Trading Commission; (202) 418–5310, *jmattingley@cftc.gov.* For information on electronic payments, contact *accounting@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

A. General

This document relates to fees for the Commission's review of the rule enforcement programs at the registered futures associations [1] and designated contract markets (''DCM''), each of which is a self-regulatory organization (''SRO'') regulated by the Commission. The Commission recalculates the fees charged each year to cover the costs of operating this Commission program.[2] The fees are set annually based on direct program costs, plus an overhead factor. The Commission calculates actual costs, then calculates an alternate fee taking volume into account, and then charges the lower of the two.[3]

B. Overhead Rate

The fees charged by the Commission to the SROs are designed to recover program costs, including direct labor costs and overhead. The overhead rate is calculated by dividing total Commission-wide overhead direct program labor costs into the total amount of the Commission-wide overhead pool. For this purpose, direct program labor costs are the salary costs of personnel working in all Commission programs. Overhead costs generally consist of the following Commission-wide costs: Indirect personnel costs (leave and benefits), rent, communications, contract services, utilities, equipment, and supplies. This formula has resulted in the following overhead rates for the most recent three years (rounded to the nearest whole percent): 174 percent for FY 2019, 158 percent for FY 2020, and 173 percent for FY 2021.

C. Conduct of SRO Rule Enforcement Reviews

Under the formula adopted by the Commission in 1993, the Commission calculates the fee to recover the costs of its rule enforcement reviews and examinations, based on the three-year average of the actual cost of performing such reviews and examinations at each SRO. The cost of operation of the Commission's SRO oversight program varies from SRO to SRO, according to the size and complexity of each SRO's program. The three-year averaging computation method is intended to smooth out year-to-year variations in cost. Timing of the Commission's reviews and examinations may affect costs—a review or examination may span two fiscal years and reviews and examinations are not conducted at each SRO each year.

As noted above, adjustments to actual costs may be made to relieve the burden on an SRO with a disproportionately large share of program costs. The Commission's formula provides for a reduction in the assessed fee if an SRO has a smaller percentage of United States industry contract volume than its percentage of overall Commission oversight program costs. This adjustment reduces the costs so that, as a percentage of total Commission SRO oversight program costs, they are in line with the pro rata percentage for that SRO of United States industry-wide contract volume.

The calculation is made as follows: The fee required to be paid to the Commission by each DCM is equal to the lesser of actual costs based on the three-year historical average of costs for that DCM or one-half of average costs incurred by the Commission for each DCM for the most recent three years, plus a pro rata share (based on average trading volume for the most recent three years) of the aggregate of average annual costs of all DCMs for the most recent three years.

The formula for calculating the second factor is: 0.5a + 0.5 vt = current fee. In this formula, ''a'' equals the average annual costs, ''v'' equals the percentage of total volume across DCMs over the last three years, and ''t'' equals the average annual costs for all DCMs. Since NFA has no contracts traded, its fee is based simply on costs for the most recent three fiscal years. This table summarizes the data used in the calculations of the resulting fee for each entity:

	Actual total costs			3-Year average actual costs	3-Year total volume %	Adjusted volume costs	2022 Assessed fee
	FY 2019	FY 2020	FY 2021				
CX Futures Exchange, L.P	$0	$22,702	$0	$7,567	0.030	$3,901	$3,901
CBOE Futures Exchange, LLC	40,517	23,325	13,418	25,753	1.119	17,217	17,217
Chicago Board of Trade	22,835	56,041	47,253	42,043	33.578	151,253	42,043
Chicago Mercantile Exchange, Inc	383,995	260,723	433,468	359,395	43.862	349,812	349,812
Eris Exchange, LLC	0	0	0	0	0.001	3	0
ICE Futures U.S., LLC	73,464	193,300	166,180	144,315	6.577	97,666	97,666
Intercontinental Exchange, Inc	0	0	0	0	0.000	0	0
Minneapolis Grain Exchange, LLC	39,525	0	28,780	22,768	0.053	11,590	11,590
Nasdaq OMX Futures Exchange, Inc	1,741	0	0	580	0.099	675	580
Nodal Exchange, LLC	2,312	0	0	771	0.099	770	770
North American Derivatives Exchange, Inc	135,159	2,598	15,849	51,202	0.204	26,392	26,392
OneChicago, LLC Futures Exchange	0	0	0	0	0.077	298	0

[1] The National Futures Association is the only registered futures association.

[2] *See* Section 237 of the Futures Trading Act of 1982, 7 U.S.C. 16a, and 31 U.S.C. 9701. For a broader discussion of the history of Commission fees, see 52 FR 46070, Dec. 4, 1987.

[3] 58 FR 42643, Aug. 11, 1993, and 17 CFR part 1, app. B.

	Actual total costs			3-Year average actual costs	3-Year total volume %	Adjusted volume costs	2022 Assessed fee
	FY 2019	FY 2020	FY 2021				
New York Mercantile Exchange/Commodity Exchange, Inc	45,425	99,311	88,701	77,812	14.238	94,126	77,812
LedgerX [1]	0	0	130,428	43,476	0.035	21,872	21,872
Kalshiex, LLC	0	0	0	0	0.024	94	0
Coinbase	0	0	0	0	0.001	3	0
Small Exchange, LLC	0	0	0	0	0.003	12	0
Subtotal	744,973	658,001	924,078	775,684	100.00	775,684	649,656
National Futures Association	540,821	567,719	723,031	610,524			610,524
Total	1,285,794	1,225,720	1,647,109	1,386,208	100.00	775,684	1,260,180

Columns may not add due to rounding.
[1] LedgerX formerly known as FTX US Derivatives.

An example of how the fee is calculated for one exchange, the Chicago Board of Trade, is set forth here:

a. Actual three-year average costs = $42,043

b. The alternative computation is: [(.5) ($42,043)] + (.5) [(.3357849) ($775,684)] = $151,253

c. The fee is the lesser of a or b; in this case $42,043

As noted above, the alternative calculation based on contracts traded is not applicable to NFA because it is not a DCM and has no contracts traded. The Commission's average annual cost for conducting oversight reviews of the NFA rule enforcement program during fiscal years 2019 through 2021 was $610,524. The fee to be paid by the NFA for the current fiscal year is $610,524.

II. Schedule of Fees

Fees for the Commission's review of the rule enforcement programs at the registered futures associations and DCMs regulated by the Commission are as follows:

	3-Year average actual costs	3-Year total volume %	Adjusted volume costs	2022 Assessed fee
CX Futures Exchange, L.P	$7,567	0.030	$3,901	$3,901
CBOE Futures Exchange, LLC	25,753	1.119	17,217	17,217
Chicago Board of Trade	42,043	33.578	151,253	42,043
Chicago Mercantile Exchange, Inc	359,395	43.862	349,812	349,812
Eris Exchange, LLC	0	0.001	3	0
ICE Futures U.S., LLC	144,315	6.577	97,666	97,666
Intercontinental Exchange, Inc	0	0.000	0	0
Minneapolis Grain Exchange, LLC	22,768	0.053	11,590	11,590
Nasdaq OMX Futures Exchange, Inc	580	0.099	675	580
Nodal Exchange, LLC	771	0.099	770	770
North American Derivatives Exchange, Inc	51,202	0.204	26,392	26,392
OneChicago, LLC Futures Exchange	0	0.077	298	0
New York Mercantile Exchange/Commodity Exchange, Inc	77,812	14.238	94,126	77,812
LedgerX [1]	43,476	0.035	21,872	21,872
Kalshiex, LLC	0	0.024	94	0
Coinbase	0	0.001	3	0
Small Exchange, LLC	0	0.003	12	0
Subtotal	775,684	100.00	775,684	649,656
National Futures Association	610,524			610,524
Total	1,386,208	100.00	775,684	1,260,180

Columns may not add due to rounding.
[1] LedgerX formerly known as FTX US Derivatives.

III. Payment Method

The Debt Collection Improvement Act (DCIA) requires deposits of fees owed to the government by electronic transfer of funds. *See* 31 U.S.C. 3720. All payments should be made via the government payment website *https://www.pay.gov/public/form/start/105542374/*. Credit card payments are only acceptable for amounts less than or equal to $24,999. All payments equal to or above $25,000 must be made by electronic funds transfer.

Fees collected from each SRO shall be deposited in the Treasury of the United States as miscellaneous receipts. *See* 7 U.S.C. 16a.

Issued in Washington, DC, on this 24th day of October, 2023, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2023–23821 Filed 10–27–23; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 4, 35, 38 154, 250, 260, 270, 284, 341, 380, 385, and 388

[Docket No. RM23–11–000; Order No. 899]

Requests for Commission Records Available in the Public Reference Room

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) amends its regulations concerning requests for Commission records available in the Public Reference Room and from the Commission's website. Specifically, the Commission's regulations are revised to remove references to the physical Public Reference Room at the Commission's headquarters, as the Commission no longer has a physical Public Reference Room. The revised regulations will direct the public to access the records that were formerly available in the Commission's physical Public Reference Room, which was located at the Commission's headquarters, 888 First Street NE, Washington, DC 20426, through the Commission's website. Other Commission regulations are being amended to reflect this change to provide consistency by directing the public to the Commission's website for records and/or assistance in obtaining Commission records.

DATES: This rule is effective November 29, 2023. The incorporation by reference of certain material listed in the rule was approved by the Director of the Federal Register as of April 27, 2020, and August 2, 2021.

FOR FURTHER INFORMATION CONTACT: Mark Hershfield, Office of the General Counsel, 888 First Street NE, Washington, DC 20426, (202) 502–8597, *mark.hershfield@ferc.gov*.

Christopher Cook, Office of Secretary, 888 First Street NE, Washington, DC 20426, (202) 502–8102, *christopher.cook@ferc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

1. The Commission amends its regulations concerning requests for Commission records available in the Commission's physical Public Reference Room. Specifically, this final rule revises 18 CFR 388.106 to delete references to a physical Public Reference Room, as the Commission no longer has a physical Public Reference Room. The revised regulations will direct the public to obtain records through the Commission's website (*www.ferc.gov*), which includes eLibrary, the official repository of the Commission's records. Moreover, given that the Commission's headquarters will no longer have a physical Public Reference Room, the Commission is revising other regulations, where necessary, to direct the public to the Commission's website (*www.ferc.gov*) for access to Commission records previously available in the Public Reference Room.

II. Discussion

2. The purpose of this final rule is to ensure that members of the public can easily obtain Commission records online that were once available in physical form in the Public Reference Room located at the Commission's headquarters. This final rule is consistent with government-wide initiatives to transition from hardcopy records to electronic records. Notably, the FOIA Improvement Act of 2016 revised that part of the Freedom of Information Act (FOIA) regarding agency Public Reference Rooms, to provide that materials must be available ''for public inspection in an electronic format.'' [1] Likewise, the National Archives Records Administration (NARA) [2] and the Office of Management and Budget [3] have directed agencies to transition records to digital or electronic forms to the greatest extent possible. This final rule continues the Commission's efforts to comply with the government transition to electronic recordkeeping.

3. In that regard, the Commission's action here aligns with that of other agencies that have removed their physical Public Reference Rooms. For example, in December 2019, the Department of Education issued a final rule requiring records to be available for public inspection only in an electronic format.[4] In the final rule, the Department of Education indicated that it was making this change ''to reflect the emphasis in 5 U.S.C. 552(a)(2) on electronic inspection for agency records created on or after November 1, 1996.'' [5] The Securities and Exchange Commission, similarly in August 2021, adopted a final rule amending its regulations to remove references to its Public Reference Room due to the lack of use of the facilities.[6]

4. Moreover, in recent years, visitation and usage of the Commission's physical Public Reference Room has substantially decreased. Over the past 20 years, the public has increasingly sought Commission records electronically through the Commission's website as opposed to visiting the physical Public Reference Room in-person. For instance, there were only four requests for hard copy documents from walk-in visitors to the Public Reference Room in 2018, and in 2019, there were only seven requests.[7] Given government-wide directives to digitize the government's paper records and the declining use of the physical Public Reference Room at the Commission's headquarters, physical access to public records does not align with Federal initiatives and trends throughout the government and the country, which call for transitioning to a paperless environment.

5. The Commission will, however, ensure that the public will be able to access the same records electronically. As such, Commission staff intends to make hardcopy records electronically available, which, along with the majority of Commission submissions and issuances, will be accessible on the Commission's website. Commission staff will also continue enhancing online resources to make it convenient

[1] *See* 5 U.S.C. 552 (2018) (*as amended by* the FOIA Improvement Act of 2016, Pub. L. 114–185 (2016)).

[2] *See* Federal Records Act Amendments of 2014, Public Law 113–187, as amended through Public Law 115–85, (enacted November 21, 2017) (codified at 44 U.S.C. 2904); *see also* NARA Bulletin 2020–01 (Sept. 30, 2020), *https://www.archives.gov/records-mgmt/bulletins/2020/2020-01.*

[3] *See* OMB Memorandum M–19–21, *Transition to Electronic Records,* (June 28, 2019) *https://www.archives.gov/files/records-mgmt/policy/m-19-21-transition-to-federal-records.pdf* (providing that Federal agencies should ''transition recordkeeping to a fully electronic environment that complies with all records management laws and regulations.''); OMB Memorandum M–23–7, *Update to Transition to Electronic Records,* (Dec. 23, 2022) *https://www.whitehouse.gov/wp-content/uploads/2022/12/M_23_07-M-Memo-Electronic-Records_final.pdf* (reinforcing the requirements established in M–19–21, reaffirming the underlying goal of the transition to electronic records, and updating the previous target dates described in M–19–21).

[4] Department of Education, Availability of Information to the Public Dep't of Education, 84 FR 67865 (Dec. 2019).

[5] *Id.*

[6] Securities and Exchange Commission, Freedom of Information Act Regulations, 86 FR 47561 (Aug. 26, 2021).

[7] In addition, after the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020, the Commission closed its headquarters building to outside visitors, which meant that the public no longer had physical access to the Public Reference Room. During the two and a half years that the Commission's headquarters building (including the physical Public Reference Room) was closed to the public, no one requested to visit the Public Reference Room and all requests for Commission documents were made either via email or by telephone.

for the public to obtain official records electronically. The public will be able to access records and receive the same level of service from Commission staff when they seek assistance in obtaining Commission records electronically as they have in the past by visiting the Commission's website (*www.ferc.gov*), or during normal business hours, by emailing *public.referenceroom@ferc.gov* or calling (202) 502–8371, TTY (202) 502–8659.[8]

6. Finally, the Commission has also reviewed other regulations to ensure they are consistent with this rule by amending them to substitute references to the physical Public Reference Room with references to the Commission's website (*www.ferc.gov*).

III. Information Collection Statement

7. The Office of Management and Budget (OMB) approves certain information collection requirements imposed by agency rule.[9] However, this final rule does not contain any additional information collection requirements. Therefore, compliance with OMB's regulations is not required.

IV. Environmental Analysis

8. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[10]

9. Part 380 of the Commission's regulations lists exemptions to the requirement to draft an Environmental Analysis or Environmental Impact Statement. Included is an exemption for procedural, ministerial, or internal administrative actions.[11] Accordingly, this rulemaking is exempt from the requirement to draft such documents under that provision.

V. Regulatory Flexibility Act

10. The Regulatory Flexibility Act of 1980 (RFA) [12] generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities. This final rule concerns a modification of current Commission regulations and practices. The Commission certifies that it will not have a significant economic impact upon participants in Commission proceedings. An analysis under the RFA is, therefore, not required.

VI. Document Availability and Incorporation by Reference

11. 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 (*https://www.ferc.gov*).

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

13. User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov* or *public.referenceroom@ferc.gov*.

14. NAESB WEQ Business Practice Standards; Standards and Models are referenced in the amendatory text of this document but were previously approved for § 38.1.

VII. Effective Date

15. The Commission is issuing this rule as a final rule without a period for public comment. Under 5 U.S.C. 553(b)(3)(A), notice-and-comment rulemaking procedures are unnecessary for ''rules of agency organization, procedure, or practice.'' This rule is, therefore, exempt from notice-and-comment rulemaking procedures, because it concerns the Commission's procedures and practices. In particular, this rule changes the agency's practice related to the location of the public reference room. The rule will not significantly affect regulated entities or the general public.

16. This rule is effective November 29, 2023.

List of Subjects

18 CFR Part 2

Administrative practice and procedure, Electric utilities, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 4

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements.

18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

18 CFR Part 38

Conflicts of interest, Electric power plants, Electric utilities, Incorporation by reference, Reporting and recordkeeping requirements.

18 CFR Part 154

Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 250

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 270

Natural gas, Price controls, Reporting and recordkeeping requirements.

18 CFR Part 284

Continental shelf, Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 292

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 341

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 357

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 380

Environmental impact statements, Reporting and recordkeeping requirements

18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 388

Confidential business information, Freedom of information.

By the Commission.

Issued: October 19, 2023.

Kimberly D. Bose,

Secretary.

In consideration of the foregoing, the Commission amends parts 2, 4, 35, 38 154, 250, 260, 270 284, 341, 380, 385, and 388, chapter I, title 18, *Code of Federal Regulations,* as follows:

[8] For members of the public seeking on-site access to electronic records at FERC Headquarters, staff from the Commission's Office of Public Participation (OPP) are available by appointment. OPP supports meaningful public engagement and participation in Commission proceedings and helps members of the public access publicly available information and navigate Commission processes. To schedule an appointment with OPP staff, the public is encouraged to contact OPP at *OPP@ferc.gov* or (202) 502–6595.

[9] 5 CFR 1320.12.

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

[11] 18 CFR 380.4(a)(1).

[12] 5 U.S.C. 601–12.

PART 2—GENERAL POLICY AND INTERPRETATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 601; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 792–828c, 2601–2645; 42 U.S.C. 4321–4370h, 7101–7352.

■ 2. In § 2.27, paragraph (f) is revised to read as follows:

§ 2.27 Availability of North American Energy Standards Board (NAESB) Smart Grid Standards as non-mandatory guidance.

* * * * *

(f) Copies of these standards may be obtained from the North American Energy Standards Board, 801 Travis Street, Suite 1675, Houston, TX 77002, Tel: (713) 356–0060. NAESB's website is at *https://www.naesb.org/.* Copies may also be obtained from the Federal Energy Regulatory Commission's website, *https://www.ferc.gov.*

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

■ 3. The authority citation for part 4 continues to read as follows:

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

■ 4. In § 4.60, paragraph (b) is revised to read as follows:

§ 4.60 Applicability and notice to agencies.

* * * * *

(b) *Notice to agencies.* The Commission will supply interested Federal, state, and local agencies with notice of any application for license for a water power project 10 MW or less and request comment on the application. Copies of the application will be available for inspection through the Commission's website, *https://www.ferc.gov.* The applicant shall also furnish copies of the filed application to any Federal, state, or local agency that so requests.

* * * * *

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

■ 5. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 6. In § 35.7, paragraph (c) is revised to read as follows:

§ 35.7 Electronic filing of tariffs and related materials.

* * * * *

(c) *Format requirements for electronic filing.* The requirements and formats for electronic filing are listed in instructions for electronic filing and for each form. These formats are available through the Commission's website, *https://www.ferc.gov.*

* * * * *

PART 38—STANDARDS FOR PUBLIC UTILITY BUSINESS OPERATIONS AND COMMUNICATIONS

■ 7. The authority citation for part 38 continues to read as follows:

Authority: 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 8. Revise § 38.1 to read as follows:

§ 38.1 Incorporation by reference of North American Energy Standards Board Wholesale Electric Quadrant standards.

(a) Any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce or for the sale of electric energy at wholesale in interstate commerce and any non-public utility that seeks voluntary compliance with jurisdictional transmission tariff reciprocity conditions must comply with the business practice and electronic communication standards and models promulgated by the North American Energy Standards Board (NAESB) Wholesale Electric Quadrant (WEQ) that are incorporated by reference in paragraph (b) of this section. The requirements and formats for electronic filing are listed in instructions for electronic filing and for each form. These formats are available through the Commission's website, *https://www.ferc.gov.*

(b) The material listed in this paragraph (b) is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the Federal Energy Regulatory Commission (the Commission) and at the National Archives and Records Administration (NARA). Contact the Commission at: *https://www.ferc.gov,* email at *public.referenceroom@ferc.gov* or via phone call at (202) 502–8371. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* The material may be obtained from the North American Energy Standards Board, 801 Travis Street, Suite 1675, Houston, TX 77002, Phone: (713) 356–0060; *https://www.naesb.org/.*

(1) WEQ–000, Abbreviations, Acronyms, and Definition of Terms (WEQ Version 003.1, September 30, 2015) (including only the definitions of Interconnection Time Monitor, Time Error, and Time Error Correction);

(2) WEQ–000, Abbreviations, Acronyms, and Definition of Terms (WEQ Version 003.3, March 30, 2020);

(3) WEQ–001, Open Access Same-Time Information Systems (OASIS), (WEQ Version 003.3, March 30, 2020);

(4) WEQ–002, Open Access Same-Time Information Systems (OASIS) Business Practice Standards and Communication Protocols (S&CP), (WEQ Version 003.3, March 30, 2020);

(5) WEQ–003, Open Access Same-Time Information Systems (OASIS) Data Dictionary, (WEQ Version 003.3, March 30, 2020);

(6) WEQ–004, Coordinate Interchange (WEQ Version 003.3, March 30, 2020);

(7) WEQ–005, Area Control Error (ACE) Equation Special Cases (WEQ Version 003.3, March 30, 2020);

(8) WEQ–006, Manual Time Error Correction (WEQ Version 003.1, Sept. 30, 2015);

(9) WEQ–007, Inadvertent Interchange Payback (WEQ Version 003.3, March 30, 2020);

(10) WEQ–008, Transmission Loading Relief (TLR)—Eastern Interconnection (WEQ Version 003.3, March 30, 2020);

(11) WEQ–011, Gas/Electric Coordination (WEQ Version 003.3, March 30, 2020);

(12) WEQ–012, Public Key Infrastructure (PKI) (WEQ Version 003.3, March 30, 2020);

(13) WEQ–013, Open Access Same-Time Information Systems (OASIS) Implementation Guide, (WEQ Version 003.3, March 30, 2020);

(14) WEQ–015, Measurement and Verification of Wholesale Electricity Demand Response (WEQ Version 003.3, March 30, 2020);

(15) WEQ–021, Measurement and Verification of Energy Efficiency Products (WEQ Version 003.3, March 30, 2020);

(16) WEQ–022, Electric Industry Registry (WEQ Version 003.3, March 30, 2020); and

(17) WEQ–023, Modeling (WEQ Version 003.3, March 30, 2020).

PART 154—RATE SCHEDULES AND TARIFFS

■ 9. The authority citation for part 154 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 31 U.S.C. 9701; 42 U.S.C. 7102–7352.

■ 10. In § 154.4, paragraph (c) is revised to read as follows:

§ 154.4 Electronic filing of tariffs and related materials.

* * * * *

(c) *Format requirements for electronic filing.* The requirements and formats for electronic filing are listed in instructions for electronic filing and for each form. These formats are available through the Commission's website, *https://www.ferc.gov.*

* * * * *

PART 250—FORMS

■ 11. The authority citation for part 250 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 28 U.S.C. 2461 note.

■ 12. In § 250.16, paragraphs (c)(3) and (d)(2) are revised to read as follows:

§ 250.16 Format of compliance plan for transportation services and affiliate transactions.

* * * * *

(c) * * *

(3) The log of affiliate and non-affiliate information must be provided to the Commission upon request and must be made available to the public under 18 CFR part 385, subpart D. When requested by the Commission, the information must be provided, within a reasonable time, according to the specifications and format contained in Form No. 592, which can be obtained on the Commission's website, *https://www.ferc.gov.*

(d) * * *

(2) The discount information must be made available to the Commission upon request and to the public under 18 CFR part 385, subpart D. When requested by the Commission, the information must be provided, within a reasonable time, according to the specifications and format contained in Form No. 592, which can be obtained on the Commission's website, *https://www.ferc.gov.*

* * * * *

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

■ 13. The authority citation for part 260 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

■ 14. In § 260.1, paragraph (b)(4) is revised to read as follows:

§ 260.1 FERC Form No. 2, Annual report for Major natural gas companies.

* * * * *

(b) * * *

(4) The form must be filed in electronic format only, as indicated in the general instructions set out in that form. The format for the electronic filing is available through the Commission's website, *https://www.ferc.gov.* One copy of the report must be retained by the respondent in its files.

■ 15. In § 260.2, paragraph (b)(4) is revised to read as follows:

§ 260.2 FERC Form No. 2–A, Annual report for Nonmajor natural gas companies.

* * * * *

(b) * * *

(4) The form must be filed in electronic format only, as indicated in the General Instructions set out in that form. The format for the electronic filing is available through the Commission's website, *https://www.ferc.gov.* One copy of the report must be retained by the respondent in its files.

PART 270—DETERMINATION PROCEDURES

■ 16. The authority citation for part 270 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301 et. seq.; 42 U.S.C. 7101 *et seq.;* E.O. 12009, 3 CFR, 1978 Comp., p. 142.

■ 17. In § 270.501, paragraph (a) is revised to read as follows:

§ 270.501 Publication of notice from jurisdictional agency.

* * * * *

(a) Upon receipt of a notice of determination by a jurisdictional agency under § 270.204, the Commission will send an acknowledgment to the applicant and make the notice available through the Commission's website, *https://www.ferc.gov.*

* * * * *

■ 18. In § 270.502, paragraph (e) is revised to read as follows:

§ 270.502 Commission review of final determinations.

* * * * *

(e) *Public notice.* The Commission will publish notice of the preliminary finding in the **Federal Register** and will post the notice on the Commission's website, *https://www.ferc.gov.* The notice will set forth the reasons for the preliminary finding.

* * * * *

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

■ 19. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717z, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

■ 20. In § 284.12, paragraph (a)(2) is revised to read as follows:

§ 284.12 Standards for pipeline business operations and communications.

(a) * * *

(2) The material listed in this paragraph (a)(2) is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the Federal Energy Regulatory Commission (the Commission) and at the National Archives and Records Administration (NARA). Contact the Commission at: *https://www.ferc.gov,* email *public.referenceroom@ferc.gov,* or via phone call at 202–502–8371. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* The material may be obtained from the North American Energy Standards Board, 801 Travis Street, Suite 1675, Houston, TX 77002, Phone: (713) 356–0060; *https://www.naesb.org/.*

* * * * *

■ 21. In § 284.13, paragraph (c)(5) is revised to read as follows:

§ 284.13 Reporting requirements for interstate pipelines.

* * * * *

(c) * * *

(5) The requirements for the electronic index are available through the Commission's website, *https://www.ferc.gov.*

* * * * *

■ 22. In § 284.123, paragraph (f)(3) is revised to read as follows:

§ 284.123 Rates and charges.

* * * * *

(f) * * *

(3) *Format requirements for electronic filing.* The requirements and formats for electronic filing are listed in instructions for electronic filing and for each form. These formats are available through the Commission's website, *https://www.ferc.gov.*

* * * * *

■ 23. In § 284.221, paragraph (b)(1) is revised to read as follows:

§ 284.221 General rule; transportation by interstate pipelines on behalf of others.

* * * * *

(b) * * *

(1) An application for a blanket certificate under this section must be filed electronically. The format for the electronic application filing available through the Commission's website, *https://www.ferc.gov,* and must include:

(i) The name of the interstate pipeline; and

(ii) A statement by the interstate pipeline that it will comply with the conditions in paragraph (c) of this section.

* * * * *

PART 292—REGULATIONS UNDER SECTIONS 201 AND 210 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 WITH REGARD TO SMALL POWER PRODUCTION AND COGENERATION

■ 24. The authority citation for part 292 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 25. In § 292.210, paragraph (e)(1) is revised to read as follows:

§ 292.210 Petition alleging commitment of substantial monetary resources before October 16, 1986.

* * * * *

(e) * * *

(1) The Commission will issue a notice of the petition filed under this section and publish the notice in the **Federal Register**. The petition will be available to inspect or to download on the Commission's website, *https://www.ferc.gov.*

* * * * *

■ 26. In § 292.211, paragraph (h)(1) is revised to read as follows:

§ 292.211 Petition for initial determination on whether a project has a substantial adverse effect on the environment (AEE petition).

* * * * *

(h) * * *

(1) The Commission will issue notice of the mitigative measures filed by an applicant under paragraph (g)(2) of this section and will publish the notice in the **Federal Register**. The mitigative measures will be on file and available to inspect or to download on the Commission's website, *https://www.ferc.gov.*

* * * * *

PART 341—OIL PIPELINE TARIFFS: OIL PIPELINE COMPANIES SUBJECT TO SECTION 6 OF THE INTERSTATE COMMERCE ACT

■ 27. The authority citation for part 341 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 1–27.

■ 28. In § 341.1, paragraph (c) is revised to read as follows:

§ 341.1 Electronic filing of tariffs and related materials.

* * * * *

(c) *Format requirements for electronic filing.* The requirements and formats for electronic filing are listed in instructions for electronic filing and for each form. These formats are available through the Commission's website, *https://www.ferc.gov.*

* * * * *

PART 357—ANNUAL SPECIAL OR PERIODIC REPORTS: CARRIERS SUBJECT TO PART I OF THE INTERSTATE COMMERCE ACT

■ 29. The authority citation for part 357 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

■ 30. In § 357.3, paragraph (c) is revised to read as follows:

§ 357.3 FERC Form No. 73, Oil Pipeline Data for Depreciation Analysis.

* * * * *

(c) *What to submit.* The format and data which must be submitted are prescribed in FERC Form No. 73, Oil Pipeline Data for Depreciation Analysis, available for review on the Commission's website *https://www.ferc.gov.*

PART 380—REGULATIONS IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

■ 31. The authority citation for part 380 continues to read as follows:

Authority: 42 U.S.C. 4321–4370h, 7101–7352; E.O. 12009, 3 CFR, 1978 Comp., p. 142.

■ 32. In § 380.9, paragraph (b) is revised to read as follows:

§ 380.9 Public availability of NEPA documents and public notice of NEPA related hearings and public meetings.

* * * * *

(b) The Commission will make environmental impact statements, environmental assessments, the comments received, and any underlaying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552 (1982)). The exclusion in the Freedom of Information Act for interagency memoranda is not applicable where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Such materials will be made available to the public through the Commission's website, *https://www.ferc.gov,* at a fee and in the manner described in part 388 of this chapter. A copy of an environmental impact statement or environmental assessment for hydroelectric projects may also be made available for inspection at the Commission's regional office for the region where the proposed action is located.

PART 385—RULES OF PRACTICE AND PROCEDURE

■ 33. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791a–825v, 2601–2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101–7352, 16441, 16451–16463; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988); 28 U.S.C. 2461 note (1990); 28 U.S.C. 2461 note (2015).

■ 34. In § 385.203, paragraph (d) is revised to read as follows:

§ 385.203 Content of pleadings and tariff or rate filings (Rule 203).

* * * * *

(d) *Form of notice.* If a pleading or tariff or rate filing must include a form of notice suitable for publication in the **Federal Register**, the company shall submit the draft notice in accordance with the form of notice specifications prescribed by the Secretary and posted on the Commission's website under Filing Procedures at *https://www.ferc.gov.*

■ 35. In § 385.2011, paragraph (c)(4) is revised to read as follows:

§ 385.2011 Procedures for filing on electronic media (Rule 2011).

* * * * *

(c) * * *

(4) The formats for the electronic filing and the paper copy are available through the Commission's website, *https://www.ferc.gov.*

* * * * *

PART 388—INFORMATION AND REQUESTS

■ 36. The authority citation for part 388 continues to read as follows:

Authority: 5 U.S.C. 301–305, 551, 552 (as amended), 553–557; 42 U.S.C. 7101–7352; 16 U.S.C. 824(o l).

■ 37. In § 388.105, paragraph (a) is revised to read as follows:

§ 388.105 Procedures for press, television, radio, and photographic coverage.

(a) The Commission issues news releases on major applications, decisions, opinions, orders, rulemakings, new publications, major personnel changes, and other matters of general public interest. Releases are issued by and available to the media from the Office of External Affairs. Releases may be obtained through the Commission's website, *https://www.ferc.gov.*

* * * * *

■ 38. In § 388.106, the section heading, paragraph (a), and paragraph (b) introductory text are revised to read as follows:

§ 388.106 Requests for Commission records available from the Commission's website, *https://www.ferc.gov.*

(a) Publicly available documents may be obtained electronically from the Commission's website, *https://www.ferc.gov,* or by requesting them from the *public.referenceroom@ferc.gov* by reasonably describing the records sought. Additional information on charges and services is available on the website.

(b) The public records of the Commission that are available for inspection and copying upon request via the Commission's website, include:

* * * * *

■ 39. In § 388.108, the section heading and paragraphs (a)(1) introductory text and (b)(1)(i) are revised to read as follows:

§ 388.108 Requests for Commission records not available from the Commission's website, *https://www.ferc.gov.*

(a) * * *

(1) Except as provided in paragraph (a)(2) of this section, a person may request access to Commission records, including records maintained in electronic format, that are not available through the Commission's website, *https://www.ferc.gov,* by using the following procedures:

* * * * *

(b) * * *

(1) * * *

(i) Track One—records that are readily identifiable and were previously cleared for release (including those subject to multiple requests and placed on *https://www.ferc.gov*);

* * * * *

■ 40. In § 388.109, paragraph (a) and paragraph (b) introductory text are revised to read as follows:

§ 388.109 Fees for record requests.

(a) *Fees for records available through the Commission's website.* (1) The fee for finding and duplicating records available from the Commission's website, *https://www.ferc.gov,* will vary depending on the size and complexity of the request. A person can obtain a copy of the schedule of fees from the Commission's website, *https://www.ferc.gov.* In addition, copies of data extracted from the Commission's files through electronic media are available on a reimbursable basis, upon written request to the Commission.

(2) Stenographic reports of Commission hearings are made by a private contractor. Interested persons may obtain copies of public hearing transcripts from the contractor at prices set in the contract, or through the search and duplication service noted above. Copies of the contract are available for public inspection on the Commission's website, *https://www.ferc.gov.*

(b) *Fees for records not available through the Commission's website (FOIA or CEII requests).* The cost of duplication of records not available from the Commission's website, *https://www.ferc.gov,* will depend on the number of documents requested, the time necessary to locate the documents requested, and the category of the persons requesting the records. The procedures for appeal of denial of requests for fee waiver or reduction are set forth in § 388.110.

* * * * *

■ 41. In § 388.110, the section heading is revised to read as follows:

§ 388.110 Procedure for appeal of denial of requests for Commission records not publicly available, denial of requests for fee waiver or reduction, and denial of requests for expedited processing.

* * * * *

[FR Doc. 2023–23587 Filed 10–27–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 153 and 380

[Docket No. RM22–8–000; Order No. 900]

Engineering and Design Materials for Liquefied Natural Gas Facilities Related to Potential Impacts Caused by Natural Hazards

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issues this final rule to revise its regulations governing liquefied natural gas (LNG) facilities subject to sections 3 and 7 of the Natural Gas Act (NGA) by removing outdated references for seismic hazard evaluations and seismic design criteria for LNG facilities. In their place, the Commission codifies its existing practice of evaluating seismic and other natural hazards and design criteria for jurisdictional LNG facilities. These revisions are intended to reduce confusion about applicable technical requirements and clarify the information required in applications filed before the Commission to ensure the public is protected from potential catastrophic impacts caused by natural hazards from design through the operation of the LNG facilities.

DATES: This rule is effective December 29, 2023.

FOR FURTHER INFORMATION CONTACT:

Andrew Kohout (Technical Information), Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8053, *andrew.kohout@ferc.gov.*

Kenneth Yu (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8482, *kenneth.yu@ferc.gov.*

SUPPLEMENTARY INFORMATION:

1. In this final rule, the Federal Energy Regulatory Commission (Commission or FERC) revises its regulations under 18 CFR parts 153 and 380 governing liquefied natural gas (LNG) facilities subject to sections 3 and 7 of the Natural Gas Act (NGA) by removing references to a legacy agency (the National Bureau of Standards) that has been renamed and two technical standards [1] related to seismic hazard evaluation and seismic design criteria for LNG facilities (Uniform Building Code's (UBC) Seismic Risk Map of the United States (Map) and National Bureau of Standards Information Report (NBSIR) 84–2833, *Data Requirements for the Seismic Review of LNG Facilities*) that have become outdated. Consistent with the Commission's previous rulemakings to update outdated regulations,[2] the final rule codifies the

[1] The National Technology Transfer and Advancement Act of 1995 (NTTAA) defines ''technical standards'' as ''performance-based or design-specific technical specifications and related management systems practices.'' 15 U.S.C. 272 note. The Office of Management and Budget (OMB) clarifies that the definition of technical standard includes, among other things, the definition of terms; classification of components; delineation of procedures; specification of dimensions, materials, performance, designs, or operations; measurement of quality and quantity in describing materials, processes, products, systems, services, or practices; test methods and sampling procedures; formats for information and communication exchange; or descriptions of fit and measurements of size or strength. Office of Mgmt. & Budget, Exec. Office of the President, Revised OMB Circular A–119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities 2(a) (Jan. 27, 2016).

[2] *See, e.g., Revisions to Reguls. Governing Authorization for Constr. of Nat. Gas Pipeline Facilities,* Order No. 555, FERC Stats. & Regs. ¶ 30,928 (1991) (cross-referenced at 56 FERC ¶ 61,414), *withdrawn,* FERC Stats & Regs. ¶ 30,965

Continued

Commission's current practice for reviewing seismic and other natural hazard evaluation and design materials related to NGA section 3 and 7 applications for LNG facilities, as memorialized in the Commission's *Guidance Manual for Environmental Report Preparation for Applications Filed Under the Natural Gas Act, Volume II, Liquefied Natural Gas Project Resource Reports 11 and 13 Supplemental Guidance* (2017 Guidance).[3] The Commission uses such engineering and design materials to assist in determining that the construction and operation of a proposed LNG facility will be safe and reliable for its entire life. The purpose of the rulemaking is to reduce confusion about the informational requirements under parts 153 and 380 of the Commission's regulations.

I. Background

A. The Commission's Statutory Authority

2. Under section 3(e) of the NGA, the Commission has exclusive jurisdiction over authorizing the siting, construction, expansion, and operation of LNG terminals onshore and in state waters.[4] Additionally, section 3(a) of the NGA provides that the Commission may condition authorizations for the siting, construction, and operation of facilities used to import or export gas as it may find necessary or appropriate.[5] The Commission also issues certificates of public convenience and necessity for LNG and other facilities used for the transportation of natural gas in interstate commerce under section 7 of the NGA.[6] When acting on applications filed pursuant to these sections of the NGA, the Commission serves as the lead Federal agency for satisfying compliance with the National Environmental Policy Act (NEPA).[7]

3. Moreover, section 16 of the NGA authorizes the Commission to prescribe and issue rules and regulations that define technical terms and prescribe the form or forms of all applications and reports to be filed before the Commission, and the information which they must contain.[8]

B. The Commission's LNG and NEPA Regulations

4. The Commission's regulations implementing its statutory authority, codified in 18 CFR parts 153, 157, and 380, direct prospective applicants[9] and applicants to provide information necessary for the Commission to process their applications.[10] Part 153 of the Commission's regulations pertains to applications for authorization to site, construct, or operate facilities used to export or import natural gas under section 3 of the NGA. These applications must include exhibits that are consistent with § 153.8(a). In particular, paragraph (a)(5) requires a report containing detailed engineering and design information be included in an application's Exhibit E and references the Commission's *Guidance Manual for Environmental Report Preparation.*[11] In addition, paragraph (a)(6) requires a report on earthquake hazards and engineering be included in an application's Exhibit E–1[12] and paragraph (a)(7) requires that an application include an Exhibit F, an environmental report that complies with §§ 380.3 and 380.12 of the Commission's regulations.[13]

5. Similarly, in part 157 of the Commission's regulations, which pertains to applications for certificates of public convenience and necessity for the construction and operation of facilities to provide interstate natural gas transportation service under section 7 of the NGA, § 157.14(a) sets forth the exhibits that must accompany an NGA section 7 application. Paragraph (a)(7) requires the applicant to file an Exhibit F–1, an environmental report that complies with §§ 380.3 and 380.12 of the Commission's regulations.[14]

6. Section 380.3 establishes the information that an applicant must file, including information identified in § 380.12 and appendix A to part 380.[15] Section 380.12 identifies the content requirements for each of the environmental reports outlined in the 13 individual resource reports.[16] Specifically, § 380.12(h)(5) requires a report, in Resource Report 6 (Geological Resources), on earthquake hazards and engineering that conforms to NBSIR 84–2833 if the applicant proposes to construct and operate LNG facilities located in zones 2, 3, or 4 of the UBC map, or where there is potential for surface faulting or liquefaction.[17]

7. Further, pursuant to § 380.12(o), applicants must also prepare a report, Resource Report 13, that contains engineering and design material for the proposed LNG facility.[18] The information provided in Resource Report 13 is used to evaluate the information provided in Resource Report 11, which addresses the potential hazard to the public from failure of LNG facility components resulting from accidents and natural catastrophes, including seismic events, the effects of these events on reliability, and the procedures and design features that have been used to reduce potential failures. Section 380.12(o)(14) requires an applicant to identify how it will comply with the applicable U.S. Department of Transportation (DOT) regulations,[19] including its siting requirements, the National Fire Protection Association (NFPA) 59A LNG Standards and, if applicable, U.S. Coast Guard's regulations[20] pertaining to vapor dispersion calculations from LNG spills over water.[21] As with Resource

(cross-referenced at 62 FERC ¶ 61,249) (before withdrawing the final rule, the Commission attempted to update and codify the Commission's practice of processing environmental data in part 380 by formalizing the use of resource reports); *Applications for Authorization to Construct, Operate, or Modify Facilities Used for the Exp. or Imp. of Nat. Gas,* Order No. 595, FERC Stats. & Regs. ¶ 31,054 (1997) (cross-referenced at 79 FERC ¶ 61,245) (codifying the Commission's practice of requiring engineering-related information and seismic information in NBSIR 84–2833); *Revision of Existing Reguls. Governing the Filing of Applications for the Constr. & Operation of Facilities to Provide Serv. or to Abandon or Serv. Under Section 7 of the Nat. Gas Act,* Order No. 603, FERC Stats. & Regs. ¶ 31,073 (1999) (cross-referenced at 87 FERC ¶ 61,125) (codifying the Commission's practice of allowing applicants to prepare environmental reports in the form of resource reports).

[3] *Notice of Availability of the Final Guidance Manual for Env'l Preparation,* 82 FR 12088 (Feb. 28, 2017). The 2017 Guidance is available at *https://cms.ferc.gov/media/guidance-manual-volume-2pdf.*

[4] 15 U.S.C. 717b(e)(1).

[5] *Id.* 717b(a). The 1977 Department of Energy (DOE) Organization Act (42 U.S.C. 7151(b)) placed all section 3 jurisdiction under DOE. The Secretary of Energy subsequently delegated authority to the Commission to ''[a]pprove or disapprove the construction and operation of particular facilities, the site at which such facilities shall be located, and with respect to natural gas that involves the construction of new domestic facilities, the place of entry for imports or exit for exports.'' DOE Delegation Order No. S1–DEL–FERC–2006, section 1.21A (May 16, 2006).

[6] 15 U.S.C. 717f(c).

[7] 42 U.S.C. 4321 *et seq;* 15 U.S.C. 717n(b)(1).

[8] 15 U.S.C. 717*o.*

[9] Applicants seeking authorization to construct LNG terminals are required to comply with the Commission's pre-filing process prior to filing an application with the Commission. *Id.* 717b–1(a); 18 CFR 157.21.

[10] *See* 18 CFR 153.8(a)(5) and (6) and (a)(7)(i), 157.14(a)(7), 157.21, 380.3, 380.12.

[11] *Id.* § 153.8(a)(5).

[12] *Id.* § 153.8(a)(6).

[13] *Id.* § 153.8(a)(7)(i). *See also id.* § 157.21 (requiring prospective applicants of LNG import or export facilities to prepare an application that contains the environmental information prescribed in part 380).

[14] *Id.* § 157.14(a)(7).

[15] *Id.* § 380.3(c)(2). Section 380.3(b) also requires applicants to provide all necessary or relevant information to the Commission and conduct studies that the Commission staff has considered necessary or relevant to determine the impact of the proposal on the environment. *Id.* § 380.3(b)(1) and (2).

[16] *Id.* § 380.12.

[17] *Id.* § 380.12(h)(5).

[18] *Id.* § 380.12(o).

[19] 49 CFR part 193.

[20] 33 CFR part 127.

[21] 18 CFR 380.12(o)(14).

Report 6, applicants must provide seismic information specified in NBSIR 84–2833 for LNG facilities that would be located in zone 2, 3, or 4 of the UBC map when preparing Resource Report 13.[22]

8. Appendix A to part 380 summarizes the minimum filing requirements for these resource reports.[23] Failure to comply with these minimum filing requirements can result in rejection of the application.[24]

C. Outdated Technical Standards and Legacy Reference in Regulations

9. As described above, both Resource Reports 6 and 13 require information based on the UBC map and NBSIR 84–2833. The UBC map groups the country into seismic risk classifications and formalizes construction standards based on those classifications. The last version of the UBC was published in 1997 [25] and was subsequently replaced by the International Code Council's (ICC) International Building Code (IBC), first published in 2000.[26] The IBC incorporates the U.S. Geological Survey's Seismic Risk Map of Ground Motions for the United States, seismic design categories in the Structural Engineering Institute (SEI) of the American Society of Civil Engineers (ASCE) 7, *Minimum Design Loads and Associated Criteria for Buildings and Other Structures* (ASCE 7),[27] and NEHRP's *Recommended Seismic Provisions for New Buildings and Other Structures.*[28]

10. Published in 1984, NBSIR 84–2833 was intended to provide guidance for applicants requesting Commission authorization to construct LNG facilities on how to investigate a site to obtain geologic and seismic data for the Commission's seismic review of proposed LNG facilities.[29] It also standardized the format for reporting this data to the Commission.[30] In light of multiple revisions to DOT's minimum safety standards and NFPA 59A since 1984, NBSIR 84–2833 no longer serves as the most appropriate guidance to help applicants prepare resource reports for the Commission's review.

11. On January 23, 2007, the Commission issued a draft document, *Seismic Design Guidelines and Data Submittal Requirements for LNG Facilities,* to address the confusion caused by these two outdated standards by updating and replacing the information in NBSIR 84–2833.[31] The Commission, however, never finalized those guidelines.

12. On February 22, 2017, as part of a larger effort to update its environmental reporting guidance, the Commission issued the 2017 Guidance, recommending specific engineering-design information, the level of detail, and formatting that should be included in applications to help Commission staff evaluate and address a proposed project's potential safety and reliability impacts.[32] The 2017 Guidance updated and clarified the level of detail and format of the information needed for the Commission's evaluation of hazards associated with proposed LNG facilities, including information regarding how accidents or natural catastrophes, including seismic events, would affect a proposed project's safety and reliability and whether the project's engineering design ensures adequate reliability and safety.[33] For example, the guidance identified the types of natural hazards that should be analyzed, the natural hazard design investigations and design forces that should be referenced, the types of structures, systems, and components that should be described, and the types of diagrams and maps that should be included. The 2017 Guidance also recommended that applicants design certain LNG structures, systems, and components to be consistent with the seismic requirements of the 2005 version of ASCE 7 to demonstrate that their proposed projects would not have a significant impact on public safety.[34] The 2017 Guidance recommended other evaluation and design measures for other natural hazards based on the regulatory requirements in § 380.12, DOT's regulations in 49 CFR part 193, and other best practices.[35]

D. Governmental Accountability Office's Report

13. On August 6, 2020, the U.S. Government Accountability Office (GAO) issued a report recommending that the Commission update part 153 of its regulations because they incorporate the outdated technical standard NBSIR 84–2833 and UBC.[36] The GAO noted that the Commission issued the 2017 Guidance and the draft 2007 Guidelines to address applicants' confusion, but, because guidance documents are not binding, it recommended that the Commission review its regulations for outdated technical standards and update them accordingly so as to avoid confusing the public about current regulatory requirements.[37]

E. Notice of Proposed Rulemaking

14. On November 17, 2022, the Commission issued a notice of proposed rulemaking (NOPR) proposing to revise the Commission's regulations as described in this final rule.[38] The Center for LNG (CLNG) and American Petroleum Institute (API) (together, commenters) filed a timely joint comment.[39] As discussed below, the Commission considered the comment in preparing the final rule.

II. Discussion

15. The current rulemaking clarifies and updates the informational requirements in the Commission's

[22] *Id.* § 380.12(o)(15).

[23] *Id.* part 380, appendix A.

[24] *Id.* §§ 153.21, 157.8. Commission practice is to issue data requests seeking to obtain missing information before an application is rejected.

[25] International Conference of Building Officials, Dwelling Construction Under the Uniform Building Code (1997 ed.).

[26] The IBC was most recently revised in 2021 and various editions are in use or have been adopted by states, territories, and municipalities. *See* International Code Council, International Codes, *https://codes.iccsafe.org/codes/i-codes;* International Code Council, International Building Code Adoption Map, *https://www.iccsafe.org/wp-content/uploads/Code_Adoption_Maps.pdf* (published Oct. 19, 2000); *see also* Rossberg, J., Leon, R.T., Evolution of Codes in the USA, *https://www.nehrp.gov/pdf/UJNR_2013_Rossberg_Manuscript.pdf* (detailing the historical changes to structural design codes in the United States).

[27] American Society of Civil Engineers, *Release of ASCE/SEI 7–22 Brings Important Changes to Structural Loading Standard,* Building Safety Journal, International Code Council (Dec. 9, 2021), *https://www.iccsafe.org/building-safety-journal/bsj-technical/release-of-asce-sei-7-22-brings-important-changes-to-structural-loading-standard.*

Additionally, we note that the National Earthquake Hazards Reduction Program (NEHRP), a Congressionally mandated, multi-agency partnership, is actively engaged in revisions to ASCE 7 and the IBC. NEHRP's *Recommended Seismic Provisions for New Buildings and Other Structures* often serves as the basis for changes to ASCE 7 and the IBC.

[28] The Commission has previously noted the importance of referencing the IBC and ASCE 7 because engineers must be knowledgeable of both the IBC and ASCE 7 to qualify as an engineer of record under state professional engineering requirements. *See* Background Section of the 2017 Guidance.

[29] National Bureau of Standards, NBSIR 84–2833: Data Requirements for the Seismic Review of LNG Facilities 1 (June 1984), *https://nvlpubs.nist.gov/nistpubs/Legacy/IR/nbsir84-2833.pdf.*

[30] *Id.*

[31] *Seismic Design Guidelines & Data Submittal Requirements for LNG Facilities* at ii (Jan. 23, 2007).

[32] *See* 2017 Guidance at 1–1—1–2.

[33] *See* Background Section of the 2017 Guidance.

[34] *Id.*

[35] *Id.* and 13–94 (listing certain good engineering practices).

[36] *See* U.S. Gov't Accountability Office, Natural Gas Exports: Updated Guidance and Regulations Could Improve Facility Permitting Processes 28 and Appendix II (Aug. 2020) (GAO Report), *https://www.gao.gov/products/gao-20-619.*

[37] *Id.* at 28–29, n.47.

[38] *Updating Reguls. for Engineering and Design Materials for Liquefied Nat. Gas Facilities Related to Potential Impacts Caused by Nat. Hazards,* 87 FR 72906 (Nov. 28, 2022), 181 FERC ¶ 61,142 (2022).

[39] CLNG and API Jan. 27, 2023 Comment.

regulations by codifying the current practice for processing NGA section 3 and 7 applications. As a brief overview of the Commission's practice, once an applicant files an application, Commission staff reviews it to ensure that it contains all the information required by the regulations. If the application is deficient, Commission staff issues requests for information to supplement the application. Once the application is complete, Commission staff then discloses to the public and the Commissioners in the NEPA document staff's analysis of the proposal's environmental, engineering, and safety effects. The environmental document includes Commission staff's recommendations related to the construction and operation of the project,[40] including measures to mitigate adverse effects.[41] If the Commission approves the application, the Commission's oversight of the project continues through final design, construction, commissioning, and operation of the project to ensure that the project has complied with the terms and conditions [42] of the Commission's authorization order.[43]

16. As the Commission has previously explained, applications that follow the same format result in a more expeditious Commission review and processing of applications.[44] When an application lacks the information necessary for the Commission to review a proposal's potential impacts on the environment, public safety, or reliability, the Commission's review is delayed until the Commission obtains the missing information.[45] The Commission has previously taken steps to clarify its regulations to reduce applicants' uncertainty when outdated Commission regulations were contributing to applicants' confusion about the Commission's practice or informational requirements.[46] The purpose of codifying an existing practice is ''to provide better guidance to the regulated industry on what the Commission needs for its environmental analysis'' and ''when the information should be provided.'' [47] As a result of this rulemaking, the Commission will be able to more ''quickly process applications in a way that protects the environment and ensures the procedural requirements of NEPA are met,'' [48] as well as ensure the proposed LNG facilities will be constructed and operated in a safe and reliable manner.

A. This Rulemaking Complies With the National Technology Transfer and Advancement Act of 1995

17. The commenters recommend that the Commission identify and use appropriate voluntary consensus standards in lieu of codifying the practices outlined in the Commission's 2017 Guidance but do not identify or recommend any specific standard that would be appropriate.[49]

18. Section 12(d) of the NTTAA [50] requires all Federal agencies and departments to use technical standards that are developed or adopted by voluntary consensus standard bodies [51] to carry out policy objectives or activities determined by the agencies and departments unless using such a standard is inconsistent with applicable law or otherwise impractical.[52] The use of a voluntary consensus standard would be impractical, for example, if it would not be effective at meeting an agency's regulatory or program needs.[53] Moreover, there may be instances where a suitable voluntary consensus standard does not exist.[54] In either instance, an agency is permitted to use another standard other than a voluntary consensus standard.[55]

19. The final rule does not adopt voluntary consensus standards related to natural hazard evaluation and design criteria for LNG structures, systems, and components because adopting such standards would be impractical. The Commission's evaluation and analysis of LNG applications, which propose technically diverse types of facilities, must consider the unique locations that the LNG facilities will be sited, constructed, and operated. Over 2,500 standards exist that could be applicable to an LNG structure, system, or component.[56] No one standard would apply to every application that the Commission reviews. Likewise, no individual application would be subject to every standard. To ensure that all types of proposals are covered by a standard would require that the Commission codify every potential consensus standard that could apply in its various LNG proceedings. Such an effort would be infeasible and would confuse applicants about which standards the Commission expects them to apply to their proposal.

20. Moreover, although some standards set criteria for the siting, design, construction, operation, and maintenance of LNG facilities, they often do not sufficiently detail the engineering information needed in an application to allow the Commission to

[40] Commission staff relies on performance and risk-based principles as part of its review to craft conditions related to the construction and operation of the proposed LNG facility.

[41] *See, e.g.,* Final EIS for Texas LNG Project (CP16–116) (issued Mar. 15, 2019); Final EIS for Rio Grande LNG Project (CP16–455) (issued Apr. 26, 2019).

[42] *See* 15 U.S.C. 717b(a), 717b(e)(3)(A), 717f(e) (authorizing the Commission to include terms and conditions to our authorization orders).

[43] *See* 15 U.S.C. 717b(a) (authorizing the Commission to issue supplemental orders as the Commission may find necessary or appropriate).

[44] *See Revision of the Commission's Reguls. Under the Nat. Gas Act,* FERC Stats. & Regs. ¶ 32,535, at 33,524 (1998) (cross-referenced at 84 FERC ¶ 61,345) (Order No. 603 NOPR). Although Order No. 603 focused on NGA section 7 applications, the order changed the informational requirements for environmental reports in part 153 so that they comport with the requirements in part 157. *Id.* at 33,527–28.

[45] *See id.* at 33,525 (stating ''[a]n incomplete filing necessitates time consuming staff data requests. However, the more complete the environmental information is at the time of filing, the more expeditiously the Commission can process the application.''). *See also* 18 CFR 153.21(b) (rejection of applications filed under part 153); 18 CFR 157.8 (rejection of applications filed under part 157).

[46] *See* Order No. 603 NOPR, FERC Stats. & Regs. ¶ 32,535 at 33,525 (explaining that ''conducting the environmental review is the most time consuming part of the certificate process. The Commission believes this is the result of several factors. First, too often pipelines are filing minimal information with the intention of filing the missing information at some later date . . . Further, applicants may be unsure of what is needed because many of the Commission's environmental regulations dealing with pipeline projects are either outdated, found in several parts of the CFR, or, in the case of the environmental report, as stated, replaced in current practice by a preferred format that does not appear anywhere in the regulations.'').

[47] *Id.*

[48] *Id.*

[49] *See* CLNG and API Jan. 27, 2023 Comment at 2.

[50] Public Law 104–113, 12(d), 110 Stat. 775 (1996).

[51] A voluntary consensus standard body is a type of association, organization, or technical society that plans, develops, establishes, or coordinates voluntary consensus standards using a voluntary consensus standards development process that includes following attributes or elements: openness, balance, due process, appeals process, and consensus. Revised OMB Circular A–119, 2(e).

[52] 15 U.S.C. 272 note. OMB further establishes factors for agencies to consider when deciding to use a standard, including the nature of the agency's statutory mandate and the consistency of the standard with that mandate; the level of protection the standard provides or is expected to provide for public health, welfare, safety, and the environment; and the clarity and detail of the standard's language. Revised OMB Circular A–119 at 17–18.

[53] Revised OMB Circular A–119 at 4, 19–20. OMB further includes in the definition of impractical circumstances in which the use of a voluntary consensus standard would be infeasible, inadequate, ineffectual, or inefficient, or less useful than the use of another standard. *Id.* at 20.

[54] *Id.* at 20.

[55] *See* 15 U.S.C. 272 note; Revised OMB Circular A–119 at 20. When an agency uses a government-unique standard in lieu of a voluntary consensus standard, it must submit a report explaining its reason to OMB through NIST. We intend to submit the report for this rulemaking to NIST before December 31, as directed by OMB.

[56] For example, approximately 50 recent LNG applications filed with the Commission reference approximately 2,500 individual applicable codes and standards. On average, an application references nearly 400 codes and standards. On the margins, applications have ranged from less than 10 to more than 1,000 proposed codes and standards.

fully assess the reliability and safety of the LNG facilities. As a result, the lack of detail has led to applicants applying these standards inconsistently.[57]

21. The Commission's practice, informed by the 2017 Guidance, has been to clarify that, when applicants prepare Resource Report 13, they should provide certain specific information regarding the engineering of the proposed LNG facilities. This information includes identifying applicable Federal regulations, proposed codes and standards, as well as additional information on the proposed siting, design, construction, and operation. By having the applicants identify all Federal regulations, codes, and standards that apply to their project-specific and site-specific proposal, the Commission is then able to evaluate applications for LNG facilities on a case-by-case basis, determine and evaluate the Federal regulations, codes, and standards that apply (including any voluntary consensus standards that are adopted into those regulations). Based on the information, the Commission could more effectively coordinate with other Federal agencies with jurisdiction over the proposal, evaluate whether the identified regulations, codes, and standards contain informational gaps, and recommend modifications or conditions that should be included in the Commission's authorization based on the proposed LNG facilities and layers of protection [58] that would reduce the risk of adverse effects to the public and the environment and reliability.[59]

22. For these reasons, we elect to codify the Commission's practice of obtaining information necessary for it to fulfill its regulatory mission in lieu of using a voluntary consensus standard, as permitted by the NTTAA.

B. Final Rule Further Clarifies Certain Terms

23. The commenters request clarification about the following terms undefined in the NOPR: (i) ''structures, systems, and components;'' (ii) ''associated safety related structures, systems, and components;'' (iii) ''applicable codes and standards;'' and (iv) ''generally accepted codes, standards, and specifications.'' [60] To prevent confusion, they recommend that the final rule define these terms and identify which codes and standards should be incorporated by reference into the Commission's regulations.[61]

24. We find no need to codify a definition for these terms but provide additional clarification below. When interpreting commonly used terms, such as ''structures, systems, and components'' and ''generally accepted,'' applicants should exercise the professional standard of care that is expected of engineers.[62] ''Structures, systems, and components'' is a common engineering term used in connection with engineering design of complex systems, including LNG facilities.[63] In general, structures provide structural support of loads. Examples include free-standing LNG storage tanks, free-standing equipment, pipe racks, buildings, and dikes, including their foundations. Systems are generally a collection of components that together perform a function. Examples include tank systems, transfer systems, firewater systems, electrical systems, and instrument and control systems. Components are equipment, or parts of equipment, that constitute pieces of larger systems. Examples include pumps, valves, and piping. The Commission's 2017 Guidance also clarifies certain structures, systems, and components.[64]

25. Structures, systems, and components that are ''associated'' with safety depend on context, such as the structure, system, or component's purpose and the characteristics of the surrounding area. Generally, a structure, system, or component that is ''associated'' with safety would be one that provides a layer of protection that the LNG operator relies on to prevent or reduce the likelihood of failure of a particular structure, system, or component, or limit, mitigate, or reduce the consequences of a failure. An example of system associated with safety is a firewater system because it is used to prevent failure of structures, systems, or components within the overall LNG plant, when exposed to a potential fire (*e.g.,* pipe rack failure, pressure vessel burst, boiling liquid expanding vapor explosion). Other examples include security systems, such as emergency lighting, including the emergency backup power generators and fuel supply, that reduce the likelihood of an intentional act that could result in failure of structures, systems, or components; and dikes that are used to contain spills from an LNG storage tank to limit the pool spread and reduce the consequences from subsequent dispersion of flammable vapors and fire impacts.[65] As noted

[57] NFPA 59A (2001 edition), for example, requires geotechnical investigations and testing to address subsurface behavior caused by loads induced by LNG structures, systems, and components. The standard, however, does not detail the parameters of the geotechnical investigations and testing. Specifically, it does not identify the locations and types of subsurface investigations that should be performed, including the number, location, spacing, cross-sections, and depths of in-situ tests or the number and types of laboratory tests performed. Investigations, in-situ tests, and laboratory tests are dictated by site of the LNG facility and are necessary to describe the subsurface conditions used to determine the design of the foundations.

ASCE 7–22 (2022 edition) is another example. ASCE 7–22 provides general requirements for buildings, other structures, and their nonstructural components that are subject to building code requirements, but how the ASCE 7–22 requirements apply to industrial facilities, such as LNG facilities, are less clear. For example, it does not define or consider the loads of equipment used during construction and operation and their effect on structures, systems, and components at industrial facilities (such as the dynamic loading from movement of construction equipment over below ground structures, systems, and components (*e.g.,* buried pipelines or piping)).

[58] Layers of protection is a method to analyze the effectiveness of independent parts of a system's design to protect or mitigate the harms caused by an event. Layers of protection typically include a facility design that prevents hazardous events, control systems, safety instrumented prevention systems, physical protection systems, site security measures for controlling access to the plant, and onsite and offsite emergency response.

[59] *See* section 11.4 of 2017 Guidance.

[60] CLNG and API Jan 27, 2023 Comment at 2.

[61] *Id.*

[62] *See, e.g.,* 18 CFR 12.5 (the Commission expects a hydropower licensee or applicant to ''use sound and prudent engineering practices in any action relating to the design, construction, operation, maintenance, use, repair, or modification of a water power project or project works''). The Commission's expectations are consistent with the expectations of other Federal agencies. *See, e.g.,* 49 CFR 193.2605 (DOT requires ''[e]ach operator [. . .] determine and perform, consistent with generally accepted engineering practice''); 29 CFR 1910.119(d)(3)(ii) (the Occupational Safety and Health Administration requires ''inspection and testing procedures [. . .] follow recognized and generally accepted good engineering practices''); 40 CFR 68.48(b) (the Environmental Protection Agency requires owners or operators of certain facilities that use and distribute hazardous chemicals ''to ensure that the process is designed in compliance with recognized and generally accepted good engineering practices'').

[63] We recognize that Federal agencies that share the responsibility of regulating LNG facilities may have different codified definitions for structures, systems, or components, determined by their own regulatory needs and statutory authorities. *See, e.g.,* 49 CFR 193.2007 (DOT defines ''component'' as ''any part, or system of parts functioning as a unit, including, but not limited to, piping, processing equipment, containers, control devices, impounding systems, lighting, security devices, fire control equipment, and communication equipment, whose integrity or reliability is necessary to maintain safety in controlling, processing, or containing a hazardous fluid''). Once the final rule becomes effective, new § 380.12(o)(14) will require prospective applicants and applicants to identify the regulations applicable to their proposal and explain how their proposal complies with them.

[64] *See, e.g.,* section 13.3.1 of the 2017 Guidance (Earthquake design conditions) and Att. 4 of the 2017 Guidance (Sample Categorization of LNG structures, Components, and Systems).

[65] The list of examples here is not intended to be exhaustive or capture the full scope of structures, systems, or components associated with safety. There may also be less critical systems that are associated with safety, such as instrument air

Continued

earlier, when interpreting terms, applicants should exercise the professional standard of care that is expected of engineers.

26. With regard to ''applicable'' codes and standards, the applicability of the code or standard is informed by the context of the sentence and paragraph. For instance, new § 380.12(o)(15)(i)(B) requires Resource Report 13 to include ''[t]he design classification for each structure, system, and component in accordance with all applicable federal, state, and local requirements and applicable codes and standards.'' The ''applicable'' codes and standards, in this context, refers to codes and standards that have requirements for design classification of structures, systems, and components. The applicable Federal regulations may also inform the applicability of codes and standards.

27. It is worth noting that the final rule does not make the Commission's 2017 Guidance obsolete. Even after the final rule becomes effective, prospective applicants and applicants are still advised to refer to guidance to understand the Commission's expectations for informational and formatting requirements under our regulations. If the Commission finds that certain terms continue to confuse applicants, which in turn may delay the Commission's review of their applications, the Commission will issue guidance to provide further assistance.

C. Final Rule Has No Retroactive Effect

28. The commenters seek clarity that the requirements in the final rule will not be retroactively applied to existing jurisdictional LNG facilities.[66] They are concerned that existing operators who file an application or request Commission approval to modify operations, expand, or add equipment to their LNG facilities would be required to upgrade or retrofit the existing facility to comply with the new requirements.[67] To help avoid confusion, they recommend that we amend parts 153, 157, and 380 by adding a new applicability section that states the new requirements do not apply to existing LNG facilities authorized before the effective date of the final rule.[68]

29. We decline to adopt commenters' recommendation because § 380.12(o) already specifies the applicability of the content and formatting requirements for Resource Report 13. It plainly states that the ''report is required for *construction of new* [LNG] facilities, or the recommissioning of existing LNG facilities.'' [69] Therefore, the requirements in new § 380.12(o)(14) would apply only to applicants who file an application to construct new LNG facilities or recommission existing LNG facilities once the final rule is effective.[70] Adding a new applicability section would be redundant and unnecessary.

D. Regulatory Burden Analysis Is Sufficient

30. The commenters recommend that the final rule compare the regulatory burden of final rule with the existing regulatory burden. They identify one new requirement that they assert could introduce a new burden. The NOPR proposes in new § 380.12(o)(15)(iii)(A)(*22*) that applicants are required to describe the proposed LNG facility's seismic monitoring system, which includes a minimum of one triaxial ground motion recorder installed to register the free-field ground motion and additional triaxial ground motion recorders on each LNG tank system foundation, LNG tank roof, and associated safety related structures, systems, and components. They argue that the term ''associated safety related structure, systems, and components'' is vague and that it is unclear how many ground motion recorders would be required. The commenters add that applicable codes and standards, such as American Concrete Institute Code 376–11, *Code Requirements for Design and Construction of Concrete Structures for Containment of Refrigerated Liquefied Gases,*[71] do not require accelerometers for LNG tanks with Safe Shutdown Earthquake (SSE) peak ground accelerations less than 0.1 gravity. If the final rule requires accelerometers for such LNG tanks and associated systems, structures, and components, it would constitute a new regulatory burden, which the commenters oppose.[72]

31. We do not anticipate that compliance with this rule will alter current practice. With respect to new § 380.12(o)(15)(iii)(A)(*22*), contrary to the commenters' argument, the new regulation does not require that LNG facilities have a certain number of seismic monitoring systems or accelerometers. The new requirement, which implements the seismic monitoring system recommendations in the 2017 Guidance, requires only that Resource Report 13 *describe* how the proposed seismic monitoring system would be designed in accordance with all applicable Federal requirements and applicable codes and standards. Nevertheless, the final rule replaces ''a minimum of one'' with ''any'' in new § 380.12(o)(15)(iii)(A)(*22*) to avoid unnecessary confusion about whether the final rule establishes a specific number of triaxial ground motion recorders. In terms of where the seismic monitoring equipment are required to be located, the new section does not require anything other than a description of what the applicant proposes, which should follow the requirements under Federal requirements and applicable codes and standards. If the Commission determines that the specifics of the proposal require additional seismic monitors to ensure safety and reliability, the order authorizing the application would include such a condition.

32. The commenters contend that the final rule will eliminate the flexibility that is purportedly in the 2017 Guidance, which allows applicants to exercise alternative approaches to prepare seismic information.[73] They quote NBSIR 84–2833 for support: ''However, if an applicant believes that the particular seismology and geology of a site indicate that some of the information identified in this report need not be provided, that information should be identified in the application, and supporting rationale or data to justify clearly such departures should be presented.'' [74]

33. The commenters are mistaken. The flexibilities in the 2017 Guidance are preserved by its codification in this rulemaking. The final rule does not enumerate specific Federal regulations or codes or standards that applicants must apply to the safe and reliable design, construction, operation, and maintenance of jurisdictional LNG facilities. Instead, consistent with the 2017 Guidance and the Commission's practice, the final rule instructs applicants to identify all applicable

systems that are used to control pneumatic (air) operated valves that can fail even when they are set in a safe position because of loss of instrument air, and valves and associated electrical cabling that are fire-rated to prevent spurious maloperation. The 2017 Guidance provides more examples. *See* 2017 Guidance, Attachment 4.

[66] CLNG and API Jan 27, 2023 Comment at 3.

[67] *Id.*

[68] *Id.* at 3.

[69] 18 CFR 380.12(o) (emphasis added).

[70] With respect to applications that are still pending Commission approval when the final rule becomes effective, to the extent that these applications are not already consistent with the final rule, the Commission will not require these applicants to amend their applications to comport with the new requirements in this final rule.

[71] The code provides minimum design and construction requirements for reinforced concrete and prestressed structures for the storage and containment of refrigerated liquefied gases.

[72] *Id.* at 3–4.

[73] CLNG and API Jan. 27, 2023 Comment at 4.

[74] *Id.* at 4 (quoting NBSIR 84–2833 at 1).

Federal regulations, including codes and standards when preparing their application, and to explain how their proposal would comply with these regulations and requirements.[75] To the extent that applicants currently identify information that is not necessary in a geotechnical report based on the seismology and geology of the proposed site, applicants are free to continue to identify the unnecessary information and provide an explanation or rationale for their decision. The Commission would review the information that is provided in Resource Report 13 and coordinate with other Federal agencies with jurisdiction over the proposed LNG facility to ensure that there is sufficient information to assist in the public safety and reliability review of the proposals. Further, if the Commission finds the application contains insufficient information based on applicable regulations, codes and standards, or is unable to demonstrate that their proposed facilities would be sited, designed, constructed, and operated safely and reliably, the Commission may issue data requests for further information or clarification.

E. Section-by-Section Discussion of Changes to Parts 153 and 380

34. Section 153.2 defines terms used in part 153 and paragraph (b) defines the NBSIR as National Bureau of Standards Information Report. Because NBSIR is outdated and the National Bureau of Standards has been renamed the National Institute of Standards and Technology, the final rule deletes existing § 153.2(b).

35. Section 153.8 identifies the exhibits required to accompany an application filed under section 3 of the NGA. Existing paragraph (a)(6) references outdated NBSIR 84–2833 and the UBC map related to preparing a report on earthquake hazards and engineering materials. The final rule deletes this paragraph and codifies in its place the relevant recommendations from the Commission's 2017 Guidance in new § 380.12(o)(15).[76] Since paragraph 4 of the section entitled ''Resource Report 6—Geological Resources in Appendix A to Part 380—Minimum Filing Requirements for Environmental Reports Under the NGA'' references the now-removed § 153.8(a)(6), the final rule also removes this paragraph.

36. Part 380 of the Commission's regulations implement NEPA. For the same reason as deleting existing § 153.8(a)(6), the final rule deletes paragraph (h)(5) of 380.12 about preparing Resource Report 6. The final rule also removes paragraph (o)(15) and replaces it with recommendations from the 2017 Guidance. Specifically, new § 380.12(o)(15)(i) requires applicants to provide general site-specific engineering information used in the geotechnical and structural design of all structures, systems, and components. This information would address occupancy and risk categorization, clarify an applicant's interpretation of risk and reliability tolerances, ensure an application discusses how the project design would withstand load combinations, and ensure that an applicant's selection of risk categorizations and associated mean recurrence intervals to withstand natural hazards adequately address public safety impacts.

37. Similarly, new § 380.12(o)(15)(ii) requires applicants to provide geotechnical information needed to address the subsurface behavior from loads induced by structures, systems, and components for LNG projects. This section addresses the scope of investigations needed to identify safety concerns and mitigative measures and replaces the scope of information that was previously required by the outdated standards.

38. Finally, new § 380.12(o)(15)(iii) requires applicants to provide information related to the facility's ability to withstand certain natural hazards, such as seismic events, floods, and hurricanes, and aligns with Commission staff's current guidance to applicants, as well as those adopted in certain Federal regulations (including the Commission's existing § 380.12(m), and applicable codes and standards such as NFPA 59A, ASCE 7, and the IBC).

39. Although not proposed in the NOPR, the final rule also revises existing § 380.12(o)(12), which currently requires only that Resource Report 13 identify codes and standards related to siting of a proposed LNG plant and marine terminal, if applicable. Because the Commission's authority is to ensure public safety and reliability of proposed LNG facilities not only during siting of the facilities but also during construction and operations of those facilities, the final rule revises existing § 380.12(o)(12) so that Resource Report 13 would now include identification of codes and standards for the design, construction, testing, monitoring, operation, and maintenance of the LNG facility in addition to identification of codes and standards for siting.[77]

40. With respect to § 380.12(o)(14), it currently requires applicants to identify how they would comply with an unspecified edition of NFPA 59A, part 193 of the DOT's regulations, and part 127 of the Coast Guard's regulations. Not all LNG facilities under the Commission's jurisdiction, however, are required to meet the design criteria specified in NFPA 59A, DOT's regulations, or Coast Guard regulations. Instead, they may be subject to other Federal regulations, such as the Environmental Protection Agency's regulations pertaining to its chemical accidental prevention program (40 CFR part 68) or the Occupational Safety and Health Administration's regulations regarding the safe management of highly hazardous chemicals (29 CFR 1910.119). To prevent confusion about the informational requirements that the Commission applies to its review of applications for the construction and operation of LNG facilities, the final rule modifies § 380.12(o)(14) by requiring applicants to identify all Federal regulations and requirements that apply to the siting, design, construction, testing, monitoring, operation, and maintenance of the proposed project and demonstrate how the proposed project will, at a minimum, comply with all applicable Federal requirements and applicable codes and standards.

[75] *See, e.g.,* 18 CFR 380.12(o)(14) (to be codified). The identify-and-explain approach is commonplace in the Commission's existing LNG regulations, such as 18 CFR 380.12(o)(13) (''Provide a list of all permits or approvals from local, state, Federal, or Native American groups or Indian agencies required prior to and during construction of the plant, and the status of each, including the date filed, the date issued, and any known obstacles to approval. Include a description of data records required for submission to such agencies and transcripts of any public hearings by such agencies. Also provide copies of any correspondence relating to the actions by all, or any, of these agencies regarding all required approvals.''); *Id.* § 50.5(e)(6) (requiring a similar list with regard to applicants seeking to initiate a pre-filing proceeding site new transmission facilities); *Id.* § 5.6(a) (mandating a similar requirement with regard to pre-application documents for certain hydropower projects).

[76] *Id.* § 153.8(a)(7) contains an errant ''(i)'' designation, which this final rule removes.

[77] This revision to § 380.12(o)(12) is consistent with the stated purpose of the NOPR, which is to update the information requirements related to filing an application to site, construct, expand, or operate an LNG terminal under section 3 of the NGA or construct or operate an LNG facility under section 7 of the NGA. *See* NOPR, 181 FERC ¶ 61,142 at P 1 & Summary. The NOPR discussed the need to clarify the use of standards related to our oversight of jurisdictional activities beyond the design of LNG facilities. *See, e.g., id.* PP 1, 2–6, 12, 19. It reasonably follows that applicants should identify all standards and codes that apply to the LNG components, not only those that relate to design, in order for the Commission to ensure that the LNG facilities, once approved, are constructed and operated in accordance with the Commission-approved designs.

III. Regulatory Requirements

A. Information Collection Statement

41. The information collection requirements contained in this final rule are subject to review by the OMB under the Paperwork Reduction Act of 1995.[78] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[79] Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number.

42. This final rule removes references to a legacy agency and two outdated technical standards for seismic hazard evaluations and seismic design criteria for LNG facilities and codifies certain existing practices concerning natural hazard evaluations and design for LNG facilities contained in the Commission's 2017 Guidance. The final rule modifies certain reporting and recordkeeping requirements included in FERC–537 (OMB Control No. 1902–0060), FERC–539 (OMB Control No. 1902–0062), and FERC–577 (OMB Control No. 1902–0128).[80]

43. Interested persons may obtain information on the reporting requirements by contacting Ellen Brown, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 by email (*DataClearance@ferc.gov*) or phone (202) 502–8663.

44. *Title:* FERC–537 (Gas Pipeline Certificates: Construction, Acquisition, and Abandonment).

Action: Revisions of information collection FERC–537.

OMB Control No.: 1902–0060.

Respondents: Natural gas companies.

Frequency of Information Collection: Ongoing.

Abstract: The final rule requires prospective applicants and applicants to provide engineering and design materials related to natural hazards to comport with the Commission's current practice of processing section 7 applications related to LNG facilities.

Necessity of Information: The revisions are intended to update the currency of the Commission's regulations and reduce confusion related the preparation and filing of applications to site, design, construct, operate, or modify LNG facilities used in interstate commerce. The revised regulations affect only entities that file applications with the Commission for jurisdictional LNG facilities and do not increase or decrease the recently approved burden on respondents since the final rule codifies the Commission's existing practices.[81]

45. *Title:* FERC–539 (Gas Pipeline Certificate: Import/Export of LNG).

Action: Revisions of information collection FERC–539.

OMB Control No.: 1902–0062.

Respondents: Natural gas companies seeking to import and/or export LNG.

Frequency of Information Collection: Ongoing.

Abstract: The final rule requires prospective applicants and applicants to provide engineering and design materials related to natural hazards to comport with the Commission's current practice of processing section 3 applications related to LNG facilities.

Necessity of Information: The revisions are intended to update the currency of the Commission's regulations and reduce confusion related the preparation and filing of applications to site, design, construct, operate, or modify facilities for the import or export of LNG. The revised regulations affect only entities that file applications with the Commission for LNG facilities.

46. The estimated burdens for FERC–539, because of the final rule in RM22–8–000, are as follows:

Number of respondents	Number of responses per respondent	Total number of responses	Average burden hours & average cost[82] per response ($)	Total annual burden hours & total annual cost ($)	Cost per respondent ($)
(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1) = (6)
6	2	12	15 hours; $1,305	180 hours; $15,660	$2,610

47. *Title:* FERC–577 (LNG Facilities: Environmental Review and Compliance).

Action: Revisions of information collection FERC–577.

OMB Control No.: 1902–0128.

Respondents: Natural gas companies seeking authorization to site, design, construct, operate, or modify LNG facilities.

Frequency of Information: Ongoing.

Abstract: The final rule requires prospective applicants and applicants, filing an application pursuant to sections 3 or 7 of the NGA, to provide engineering and design materials related to natural hazards to comport with the Commission's current practice of processing environmental reports filed pursuant to part 380 of the Commission's regulations.

Necessity of Information: The revisions are intended to update the currency of the Commission's regulations and reduce confusion related the preparation and filing of applications to site, design, construct, operate, or modify LNG facilities. To facilitate the Commission's review of these applications, applicants are required to also file resource reports detailing engineering and design materials to assist the Commission's understanding of the LNG facility's impact on the environment, safety, security, and reliability. The revised regulations affect only entities that file applications with the Commission for LNG facilities.

48. The estimated burdens for FERC–577, because of the final rule in RM22–8–000, are as follows:

[78] 44 U.S.C. 3507(d).

[79] 5 CFR 1320.11.

[80] In the proposed rule, the Commission used FERC–539A & FERC–577A as temporary placeholder designations for the purposes of this rulemaking. The permanent designations (*i.e.,* FERC–539 and FERC–577) were pending renewal at OMB, and no more than one information collection may be pending at OMB at one time. At present, FERC–539 and FERC–577 are available so the final rule references these OMB control numbers.

[81] *See* Order No. 603 NOPR, FERC Stats. & Regs. ¶ 32,535 at 33,526 (in a similar rulemaking in which the Commission codified existing practice for reviewing environmental reports, the Commission noted ''that the proposed changes to the environmental regulations discussed above do not change the filing requirements burden on the pipeline. They simply codify existing standard practice to help expedite the environmental review process.'').

[82] The Commission staff estimates that industry is similarly situated in terms of hourly cost (for wages plus benefits). Based on the Commission's FY (Fiscal Year) 2021 average cost (for wages plus benefits), $87.00/hour is used.

Number of respondents	Number of responses per respondent	Total number of responses	Average burden hours & average cost per response ($) (rounded)	Total annual burden hours & total annual cost ($) (rounded)	Cost per respondent ($) (rounded)
(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1) = (6)
6	16	96	193.52 hours; $17,610.32	18,578 hours; $1,690,591	$281,765

The Commission has reviewed the proposed revisions and has determined that they are necessary. These requirements conform to the Commission's need to ensure public safety, secure jurisdictional infrastructure, and enhance efficient information collection, communication, and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements for FERC–537, FERC–539, and FERC–577.

B. Environmental Analysis

49. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant effect on the human environment.[83] Excluded from this requirement are rules that are clarifying, corrective, or procedural, or that do not substantially change the effect of legislation or the regulations being amended.[84] This final rule revises the filing requirements for new or recommissioned existing LNG facilities by deleting references to a legacy agency and two outdated technical standards. Because this rule is corrective, aligns the Commission's regulations with the Commission's current practice, and does not substantially change the effect of the regulations being amended, preparation of an Environmental Assessment or Environmental Impact Statement is not required.

C. Regulatory Flexibility Act Certification

50. The Regulatory Flexibility Act of 1980 (RFA) [85] generally requires a description and analysis of rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a rule and minimize any significant economic impact on a substantial number of small entities.[86] In lieu of preparing a regulatory flexibility analysis, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities.[87]

51. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[88] SBA regulations designate natural gas pipelines (*i.e.,* NAICS 4865210) as small entities if they do not exceed the size standard of $36.5 million.[89] For the past five years, one company not affiliated with larger companies had annual revenues in combination with its affiliates of $36.5 million or less and therefore could be considered a small entity under the RFA. This represents about five percent of the total potential respondents that may have a significant burden imposed on them.

52. As noted earlier, the final rule will affect only entities filing new applications to site, construct, operate, or expand an LNG facility pursuant to sections 3 or 7 of the NGA once the final rule becomes effective. As a result of removing outdated terms and aligning the Commission's regulatory text with current environmental information practices, the final rule will reduce confusion about the Commission's requirements, which would necessitate the issuance of fewer data requests to obtain a complete application that better reflects safe design, construction, maintenance, and operation of proposed LNG facilities.

53. Accordingly, pursuant to section 605(b) of the RFA, the Commission certifies that this final rule would not have a significant economic impact on a substantial number of small entities.

D. Document Availability

54. 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 (*https://www.ferc.gov*).

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

56. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

List of Subjects

18 CFR Part 153

Exports, Imports, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 380

Environmental impact statements, Reporting and recordkeeping requirements.

By direction of the Commission. Commissioner Danly is concurring with a separate statement attached.

Issued: October 23, 2023.

Kimberly D. Bose,

Secretary.

In consideration of the foregoing, the Commission amends parts 153 and 380, chapter I, title 18, Code of Federal Regulations, as follows.

PART 153—APPLICATIONS FOR AUTHORIZATION TO CONSTRUCT, OPERATE, OR MODIFY FACILITIES USED FOR THE EXPORT OR IMPORT OF NATURAL GAS

■ 1. The authority citation for part 153 is revised to read as follows:

Authority: 15 U.S.C. 717b, 717o; E.O. 10485, 3 CFR, 1949–1953 Comp., p. 970, as amended by E.O. 12038, 3 CFR, 1978 Comp., p. 136; DOE Delegation Order No. S1–DEL–FERC–2006 (May 16, 2006).

§ 153.2 [Amended]

■ 2. Amend § 153.2 by:

■ a. Removing paragraph (b); and

[83] *Reguls. Implementing the Nat'l Env'l Policy Act of 1969,* Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

[84] 18 CFR 380.4(a)(2)(ii).

[85] 5 U.S.C. 601–612.

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

[87] *Id.* 605(b).

[88] 13 CFR 121.101.

[89] *Id.*

■ b. Redesignating paragraphs (c) through (f) as paragraphs (b) through (e), respectively.

§ 153.8 [Amended]

■ 3. Amend § 153.8 by:
■ a. Removing paragraph (a)(6);
■ b. Redesignating paragraphs (a)(7) through (9) as paragraphs (a)(6) through (8), respectively; and
■ c. In newly redesignated paragraph (a)(6):
■ i. Removing the designation ''(i)''; and
■ ii. Removing ''§ 380.3 and § 380.12'' and adding ''§§ 380.3 and 380.12'' in its place.

PART 380—REGULATIONS IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

■ 4. The authority citation for part 380 continues to read as follows:

Authority: 42 U.S.C. 4321–4370h, 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

■ 5. Amend § 380.12 by:
■ a. Removing paragraph (h)(5);
■ b. Redesignating paragraph (h)(6) as paragraph (h)(5); and
■ c. Revising paragraphs (o)(12), (14), (15).

The revisions read as follows:

§ 380.12 Environmental reports for Natural Gas Act applications.

* * * * *

(o) * * *

(12) Identify all codes and standards under which the plant (and marine terminal, if applicable) will be sited, designed, constructed, tested, monitored, operated, and maintained, and any special considerations or safety provisions that were applied to the design of plant components.

* * * * *

(14) Identify all Federal, state, and local regulations and requirements that apply to the siting, design, construction, testing, monitoring, operation, and maintenance of the proposed project and explain how the proposed project will comply with the applicable Federal regulations, including codes and standards incorporated by reference into Federal regulations.

(15) Provide information to demonstrate that the proposed facilities will be sited, designed, constructed, and operated to maintain reliability and will not significantly impact public safety given geotechnical conditions and the occurrence of a natural hazard identified in paragraphs (o)(15)(i) through (iii) of this section. Site information must provide geotechnical studies and natural hazard studies based on the site location, which must provide impacts and magnitude of historical events and projected impacts and magnitude of events based on projected prescriptive/deterministic events and projected probabilistic events corresponding to mean recurrence intervals. Design information must provide the basis of design supported by site information, including design parameters and criteria and preliminary resultant design loads used in the geotechnical and structural design of LNG facilities. Construction and operation information must also include discussion of quality assurance and quality control plans, monitoring programs, and action programs developed in preparation of and response to geotechnical and natural hazards. All information provided must, at a minimum, demonstrate compliance with all applicable Federal requirements and applicable codes and standards, and identify any applicable state and local requirements for the siting, design, construction, testing, monitoring, operation, and maintenance used to safeguard against significant impacts caused by geotechnical conditions and natural hazards.

(i) *General information.* Provide site information that includes:

(A) A description of all structures, systems, and components, including, at a minimum, the layout of all proposed above ground and below ground structures, systems, and components including temporary access roads used during construction and permanent roads used during operation.

(B) The design classification for each structure, system, and component in accordance with, at a minimum, all applicable Federal requirements and applicable codes and standards.

(C) The derivation and values for risk category and mean recurrence intervals that are, at a minimum, in accordance with all applicable Federal requirements and applicable codes and standards.

(D) A description of all load combinations for each design classification for all structures, systems, and components that are, at a minimum, in accordance with design methods and all applicable Federal requirements and applicable codes and standards.

(E) A description of all preliminary dead loads that are, at a minimum, in accordance with all applicable Federal requirements and applicable codes and standards, and include, at a minimum, weight of materials of construction of structures, systems, and components; weight of any hydrostatic test fluid service within structures, systems, and components during commissioning; weight of fluid services within structures, systems, and components during startup, normal operation, abnormal operation, and shutdown; and soil and hydrostatic pressure loads and potential uplift of below ground structures, systems, and components.

(F) A description of all preliminary live loads that are, at a minimum, in accordance with all applicable Federal requirements and applicable codes and standards, and include, at a minimum, dynamic loads from movement during transportation of structures, systems, and components; induced loads from construction equipment atop of below ground structures, systems, and components; uniform and concentrated loads from construction and operation personnel and equipment on structures, systems, and components; and crane loads for structures, systems, and components.

(G) A description of all preliminary loads induced from natural hazards for all structures, systems, and components that are, at a minimum, in accordance with all applicable Federal requirements and applicable codes and standards as described in paragraph (o)(15)(iii) of this section.

(H) A description of all mitigation measures to protect against natural hazards (like earthquakes) including, at a minimum, a discussion of the proposed site elevation and design of any storm walls or barriers relative to information described in paragraphs (o)(15)(ii) and (iii) of this section.

(I) A description of a natural hazard preparedness and action program, which includes facilitating timely decisions concerning the present or future state of the LNG facility that address, at a minimum, the natural hazards described in paragraph (o)(15)(iii) of this section.

(ii) *Geotechnical information.* Provide a geotechnical investigation that includes:

(A) A summary of the site investigation that lists the applicant's exploratory program for the site and the types of subsurface investigations performed and planned to be performed for the site.

(B) A list and description of all in situ tests performed, standards used for tests, and their results including all standard penetration tests, cone penetration tests (static and dynamic), test pits, trenches, borings, rock coring, soil sampling, plate load tests, and in situ shear strength tests.

(C) A plot plan that identifies the number, location, spacing, cross-sections, and depths of each in situ test.

(D) A description of completed surveys, standards used for surveys, and the results of surveys that were conducted to obtain continuous lateral and depth information for the

evaluation of subsurface conditions including all seismic refraction and reflection surveys.

(E) A description of the applicant's laboratory testing program that includes the treatment of samples, the preparation of the soil specimen for testing, the techniques to detect sample disturbance, and the laboratory testing specifications.

(F) A list and description of all laboratory tests performed, standards used for tests, and their results, including results from all soil classification tests, index tests, strength and compressibility tests, permeability tests, and soil corrosivity tests.

(G) A description of proposed mitigation measures for soil improvement or other mitigation that would remediate low bearing strength, poor consolidation, poor permeability, high corrosivity, or other geotechnical issues discovered during in situ or laboratory tests.

(H) A discussion of subsurface conditions and profiles based on the results of the subsurface exploration and field test conducted at the site. Subsurface profiles must identify groundwater conditions and the physicochemical properties of the groundwater, soil/rock layers and parameters, and various soil strata in various cross-section drawings spanning across the site including the LNG storage tank areas.

(I) A description of soil conditions that indicate compressible or expansive soils, corrosive soils, collapsible soils, erodible soils, liquefaction-susceptible soils, frost-heave susceptible soils, frozen soils, sanitary landfill, or contaminated soils.

(J) An analysis of actual or potential hazards (*e.g.,* landslides, subsidence, uplift, capable faults, or collapse resulting from natural features such as tectonic depressions and cavernous or karst terrains) to the site.

(K) A discussion of the relationship between the regional and local geology and the site location.

(L) An evaluation and discussion of surface displacement caused by faulting or seismically induced lateral spreading or lateral flow, regional subsidence, local subsidence, and heave.

(M) Drawings of existing and proposed site elevation contours.

(N) A slope-stability analysis, including slope stabilization methods, sloping topography for the site, recommendations for slope stability, static and seismic stability, and factor of safety.

(O) Recommendations for site improvement to increase bearing capacity, reduce the potential of liquefaction and lateral spreading, and mitigate poor or unusual soil conditions.

(P) Recommendations for site improvement to mitigate soil contaminants and shoreline erosion control.

(Q) An evaluation and discussion of the expected total settlement over the design life of the facilities that considers soil conditions, regional subsidence, and local subsidence.

(R) Recommendations for shallow foundations, including, at a minimum, ultimate bearing capacity, factor of safety, allowable bearing capacity, total and differential settlement criteria, liquefaction settlements, settlement monitoring, and lateral resistance.

(S) Recommendations for deep foundations, including, at a minimum, acceptable foundation type, bearing capacity, total pile capacities, axial capacity, lateral capacity, group effects, down-drag, factor of safety, settlement of single pile and pile groups, lateral movement of pile groups, pile installation, pile cap, indicator piles and pile load test programs, static axial pile load test, lateral load test, and dynamic pile load test.

(T) A summary of information needed to establish broad design parameters and conclusions used to determine the proposed layout and design of buildings, structures, and support facilities.

(U) A description of the implementation of the geotechnical monitoring system for the site and structures, including inclinometer, extensometers, piezometer, tiltmeter, settlement monuments or cells, pressure and load cells, and crack monitoring devices.

(iii) *Natural hazard information.* Provide studies, basis of design, and plans for all natural hazards, including, at a minimum, each natural hazard in paragraphs (o)(15)(iii)(A) through (G) of this section:

(A) *Seismic information.* Provide a discussion of seismic design and hazards analysis that includes:

(*1*) The seismic design basis and criteria that are, at a minimum, in accordance with all applicable Federal requirements, and applicable codes, standards, and specifications used as basis of design.

(*2*) A description of seismic setting and seismic hazard investigation.

(*3*) A description of seismological characteristics of the geographical region within 100 miles of the site.

(*4*) A description of capable faults, including any part of a fault within five miles of the site, the fault characteristics in the site vicinity, the methods and techniques used for fault analysis and investigations, and the potential effect of fault displacement on structures, systems, and components.

(*5*) Derivation of the site class describing the soil conditions and supportive geotechnical studies that are, at a minimum, in accordance with all applicable Federal requirements and applicable codes and standards.

(*6*) Criteria used to determine potential soil liquefaction, subsidence, fault rupture, seismic slope stability, and lateral spreading.

(*7*) A historical ground motion analysis, including a description of past seismic events of Modified Mercalli Intensity greater than IV or magnitude greater than 3.0 within 100 miles of the site, including date of seismic events, magnitude of seismic events, distance from site to epicenter of seismic events, depth of seismic events, and resultant ground motions recorded or estimated at site location.

(*8*) A site-specific ground motion analysis based on ground motions projected from the U.S. Geological Survey national seismic maps and any deterministic seismic hazard analyses (DSHA) and probabilistic seismic hazard analyses (PSHA).

(*9*) Derivation of all ground motions used for the Operating Basis Earthquake (OBE), Safe Shutdown Earthquake (SSE), site-specific design earthquake (DE), site-specific peak ground motion (PGA), and aftershock level earthquake (ALE) that are, at a minimum, in accordance with all applicable Federal requirements and applicable codes and standards.

(*10*) A list of OBE, SSE, and ALE site-specific ground motion spectral values for 0.5%, 1%, 2%, 5%, 7%, 10%, 15%, and 20% damping during all periods range.

(*11*) The DE seismic coefficients and seismic design parameters, including the spectral response acceleration and five percent damped design spectral response acceleration parameters at a short-period, at a period of one second, and at other periods; short-period site coefficient and long-period site coefficient; importance factor; component importance factor; fundamental period of the structure; long-period transition period; and response modification coefficient that are, at a minimum, in accordance with all applicable Federal requirements and applicable codes and standards.

(*12*) A description of site-specific response spectrum analysis method, time history analysis method, or equivalent static load analysis.

(*13*) A seismic analysis for soil-structure interaction that is, at a

minimum, in accordance with all applicable Federal requirements and applicable codes and standards, and includes, at a minimum, a discussion of the modeling methods and the factors considered in the modeling methods, including the extent of embedment, the layering of the soil/rock strata, and the boundary of soil-structure model.

(*14*) A comparison of seismic responses used for each design classification for all structures, systems, and components.

(*15*) A list of seismic hazard curves of spectral accelerations for all periods for the site.

(*16*) Vertical response spectra for seismic design and ratio to horizontal response spectra.

(*17*) Natural frequencies and responses for each LNG tank system and associated safety systems and associated structures, systems, and components.

(*18*) A description of procedures used for structural analyses, including consideration of incorporating the stiffness, mass, and damping characteristics of the structural systems into the analytical models.

(*19*) A description of determination of seismic overturning moments and sliding forces for each LNG tank system and associated safety related structures, systems, and components, including consideration of the three components of input motion and the simultaneous action of vertical and horizontal seismic forces.

(*20*) A description of design procedure for seismically isolated structures, systems, and components.

(*21*) A description of seismic design basis and criteria for the LNG storage tank(s) and foundation(s). The seismic design basis and criteria must include the flexibility of the tank shell(s) and its influence on the natural frequencies of the tank(s), liquid level, effects of liquid motion or pressure changes; minimum design freeboard; sloshing and impulsive loads; seismic coefficients; importance factor(s); reduction factor(s); slosh height(s); sloshing periods of LNG storage tank(s); global stability of the tank(s) in terms of the potential for overturning and sliding; differential displacement between the tank(s) and the first support; and a total settlement monitoring program for the tank foundation(s).

(*22*) A description of seismic monitoring system in accordance with, at a minimum, all applicable Federal requirements and applicable codes and standards, including any triaxial ground motion recorder installed to register the free-field ground motion and additional triaxial ground motion recorders on each LNG tank system foundation, LNG tank roof, and associated safety related structures, systems, and components. The proposed seismic monitoring must include the installation locations on a plot plan; description of the triaxial strong motion recorders or other seismic instrumentation; the proposed alarm set points, and operating procedures (including emergency operating procedures) for control room operators in response to such alarms/data obtained from seismic instrumentation; and maintenance procedures.

(*23*) A cross reference to potential for earthquake generated tsunamis and seiches provided in paragraph (o)(15)(iii)(B) of this section, earthquake generated floods in paragraph (o)(15)(iii)(C) of this section, earthquake generated landslides in paragraph (o)(15)(iii)(G) of this section, and earthquake generated releases and fires in paragraph (m) of this section.

(B) *Tsunami and seiche information.* Provide a discussion of tsunami and seiche design and hazards that includes:

(*1*) The tsunami and seismic design basis and criteria with a description of the applicable requirements and guidelines, and generally accepted codes, standards, and specifications used as basis of design.

(*2*) The seiche design inundation and run-up elevations and corresponding return periods for all structures, systems, and components.

(*3*) The maximum considered tsunami (MCT) inundation and run-up elevation for the site, including the maximum considered earthquake (MCE) level ground motions at the site if the MCE is the triggering source of the MCT.

(*4*) A comparison of design loads of seiche water inundation elevations with inundation elevation corresponding to return periods of MCE and MCT for all structures, systems, and components.

(*5*) The Tsunami Risk Category for the site and a description of potential tsunami generation by seismic sources, and the prevention and mitigation plan for potential tsunami and seiche hazards.

(*6*) A cross reference to potential tsunami and seiche generated floods in paragraph (o)(15)(iii)(C) of this section, tsunami and seiche generated landslides in paragraph (o)(15)(iii)(G) of this section, and tsunami and seiche generated releases and fires in paragraph (m) of this section.

(C) *Flood information.* Provide a discussion of flood design criteria and hazards that includes:

(*1*) The floods design basis and criteria with references to applicable requirements and guidelines, and generally accepted codes, standards, and specifications used as basis of design.

(*2*) A description of flooding potential in the region surrounding the site due to one or more natural causes such as storm surge, tides, wind generated waves, meteorological tsunamis or seiches, extreme precipitation, or other natural hazard events that have a common cause.

(*3*) A comparison of flood design loads corresponding to return periods of 10,000-year, 5,000-year, 1,000-year, 500-year, and 100-year for all structures, systems, and components.

(*4*) A discussion of final designed site elevations and storm surge walls or floodwalls for the site that includes tsunami considerations, flood design considerations, site total settlements, sea level rise, subsidence.

(D) *Hurricane information.* Provide a discussion of hurricanes and other meteorological events design criteria and hazards that includes:

(*1*) The wind and storm surge design basis and criteria that are, at a minimum, in accordance with all applicable Federal requirements, and applicable codes, standards, and specifications used as basis of design.

(*2*) A comparison of design wind loads for both sustained and three-second gusts and storm surge elevations, including consideration for still water, wind/wave run-up effects, and crest elevations, with hurricanes and other meteorological events at the site location corresponding to return periods of 10,000-year, 5,000-year, 1,000-year, 500-year, and 100-year for all structures, systems, and components.

(*3*) A discussion of historic hurricane frequencies and hurricane categories equivalent on the Saffir-Simpson Hurricane Wind Scale at the site and associated wind speeds and storm surge.

(*4*) The design regional subsidence that includes a discussion of the elevation change used to account for regional subsidence for the design life of the facilities at the site.

(E) *Tornado information.* Provide a discussion of tornado design criteria and hazards that includes:

(*1*) The tornadoes design basis and criteria that are, at a minimum, in accordance with all applicable Federal requirements, and applicable codes, standards, and specifications used as basis of design.

(*2*) A comparison of tornado design loads corresponding to return periods of 10,000-year, 5,000-year, 1,000-year, 500-year, and 100-year for all structures, systems, and components.

(*3*) A discussion of historic tornado frequencies and tornado categories as classified on the Enhanced Fujita (EF)

Scale at the site and associated wind speeds.

(*4*) A discussion of tornado loads determination and design procedure.

(*5*) A comparison of impact between wind loads and tornado loads for the site.

(F) *Rain, ice, snow, and related precipitation information.* Provide a discussion of rain, ice, snow, and related precipitation design criteria and hazards that includes:

(*1*) The rain, ice, and snow design basis and criteria that are, at a minimum, in accordance with all applicable Federal requirements, and applicable codes, standards, and specifications used as basis of design.

(*2*) The identification of stormwater flows, outfalls, and stormwater management systems for all surfaces, including spill containment system with sump pumps or other water removal systems.

(*3*) The comparison of rain, ice, and snow design loads with rainfall rates, snow loads, and ice loads corresponding to return periods of 10,000-year, 5,000-year, 1,000-year, 500-year, and 100-year for all structures, systems, and components.

(*4*) A discussion of historic ice and blizzard events and frequencies and other ice and snow events at the site and associated loads.

(G) *Landslides, wildfires, volcanic activity, and geomagnetism information.* Provide a discussion of landslides, wildfires, volcanic activity, and geomagnetism design criteria and hazards that includes:

(*1*) The landslides, wildfires, volcanic activity, and geomagnetism design basis and criteria that are, at a minimum, in accordance with all applicable Federal requirements, and applicable codes, standards, and specifications used as basis of design.

(*2*) A discussion of historic landslide, wildfire, volcano activity, and geomagnetic disturbance risks and intensities at the site.

(*3*) A description of capable volcanoes, volcanic characteristics of the region, and a discussion of potentially hazardous volcanic phenomena considerations.

■ 6. Amend appendix A to part 380 in the section entitled ''Resource Report 6—Geological Resources'' by:

■ a. Removing paragraph 4;

■ b. Redesignating paragraph 5 as paragraph 4; and

■ c. Revising newly redesignated paragraph 4.

The revision reads as follows:

Appendix A to Part 380—Minimum Filing Requirements for Environmental Reports Under the Natural Gas Act

* * * * *

Resource Report 6—Geological Resources

* * * * *

4. For underground storage facilities, how drilling activity by others within or adjacent to the facilities would be monitored, and how old wells would be located and monitored within the facility boundaries. (§ 380.12(h)(5))

* * * * *

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

Appendix A—Commissioner Danly's Statement

United States of America Federal Energy Regulatory Commission

Updating Regulations for Engineering and Design Materials for Liquefied Natural Gas Facilities Related to Potential Impacts Caused by Natural Hazards

Docket No. RM22–8–000

(Issued October 23, 2023)

DANLY, Commissioner, *concurring:*

1. I agree that several changes to the Commission's regulations will be helpful to ensure that the Commission has adequate information to examine the design, engineering and safety of liquefied natural gas (LNG) facilities when authorizing the siting of such facilities under the Commission's jurisdiction. I write separately to express two misgivings about the final rule.[90]

2. *First,* in their joint comments on the proposed rule, the Center for LNG and the American Petroleum Institute (API) identified potential sources of confusion throughout the proposed rule regarding the requirements that project sponsors identify and comply with all ''applicable codes and standards.'' [91] The final rule does not sufficiently address these well-articulated concerns.

3. *Second,* language in the final rule suggests that the Commission has perpetual jurisdiction over LNG facilities [92] under Natural Gas Act sections 3 and 7.[93] I continue to harbor misgivings that the Commission may not, in fact, have ongoing jurisdiction to oversee the safety of LNG facilities once permitted.[94]

For these reasons, I respectfully concur.

James P. Danly,

Commissioner.

[FR Doc. 2023–23791 Filed 10–27–23; 8:45 am]

BILLING CODE 6717–01–P

[90] *See Updating Reguls. for Eng'rg & Design Materials for Liquefied Nat. Gas Facilities Related to Potential Impacts Caused by Nat. Hazards,* 185 FERC ¶ 61,050 (2023) (Final Rule).

[91] *See* Center for LNG & API January 27, 2023 Comments at 2.

[92] *See* Final Rule, 185 FERC ¶ 61,050 at P 39 (''Because the Commission's authority is to ensure public safety and reliability of proposed LNG facilities not only during siting of the facilities but also during construction and operations of those facilities, the final rule revises existing § 380.12(o)(12) so that Resource Report 13 would now include identification of codes and standards for the design, construction, testing, monitoring, operation, and maintenance of the LNG facility in addition to identification of codes and standards for siting.'') (footnote omitted); *see also id.* P 15 (''The current rulemaking clarifies and updates the informational requirements in the Commission's regulations by codifying the current practice for processing NGA section 3 and [section] 7 applications. . . . The environmental document includes Commission staff's recommendations related to the construction and operation of the project, including measures to mitigate adverse effects. If the Commission approves the application, the Commission's oversight of the project continues through final design, construction, commissioning, and operation of the project to ensure that the project has complied with the terms and conditions of the Commission's authorization order.'') (citing 15 U.S.C. 717b(a), 717b(e)(3)(A), 717f(e) (authorizing the Commission to include terms and conditions to our authorization orders)) (internal citations omitted) (footnotes omitted).

[93] 15 U.S.C. 717b, 717f.

[94] *See EcoEléctrica, L.P.,* 184 FERC ¶ 61,114 (2023) (Danly, Comm'r, concurring at P 3); *EcoEléctrica, L.P.,* 180 FERC ¶ 61,054 (2022) (Danly, Comm'r, concurring at P 3); *EcoEléctrica, L.P.,* 179 FERC ¶ 61,038 (2022) (Danly, Comm'r, concurring); *EcoEléctrica, L.P.,* 177 FERC ¶ 61,164 (2021) (Danly, Comm'r, concurring); *EcoEléctrica, L.P.,* 176 FERC ¶ 61,192 (2021) (Danly, Comm'r, concurring).

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 228

RIN 0596–AD58

Long-Term Financial Assurance for Mining

AGENCY: Forest Service, Agriculture.

ACTION: Interim final rule; request for public comment.

SUMMARY: The Forest Service is amending its locatable minerals rules to provide mine operators with a broader array of options for securing financial assurance for funding reclamation work. Locatable mineral operations on National Forest System lands must be conducted to minimize adverse environmental impacts on National Forest surface resources, which often includes reclamation at the conclusion of operations. Current regulations provide that the Forest Service may require the operator to furnish a ''bond'' to fund reclamation work. However, the financial assurance mechanisms are limited to surety bonds, cash, and negotiable securities. This rule will expand those options. It does not change requirements for surface resource and environmental protection. Rather, it provides additional options for obtaining the financial assurance

necessary to be sure that those requirements will be met.

DATES: This rule is effective November 29, 2023. Comments concerning this rule must be received by December 29, 2023.

ADDRESSES: Comments, identified by RIN 0596–AD58, should be sent via one of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for sending comments;

2. *Mail:* Director, Lands, Minerals and Geology Management, 201 14th Street SW, Washington, DC 20250–1124; or

3. *Hand Delivery/Courier:* Director, Lands, Minerals and Geology Management, 1st Floor South East, 201 14th Street SW, Washington, DC 20250–1124.

Please confine written comments to issues pertinent to the interim rule; explain the reasons for any recommended changes; and, where possible, reference the specific wording being addressed. All comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received on this proposed rule at the Office of the Director, Lands, Minerals and Geology Management, 201 14th Street SW, 1st Floor Southeast, Sidney R. Yates Federal Building, Washington, DC, on business days between 8:30 a.m. and 4 p.m. Visitors are encouraged to call ahead at 202–205–1680 to facilitate entry into the building. Comments may also be viewed on the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Searchbox, enter ''RIN 0596–AD58'' and click the ''Search'' button.

FOR FURTHER INFORMATION CONTACT: Sarah Shoemaker, Geologist at 907–586–7886 or *sarah.shoemaker@usda.gov.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339 between 8 a.m. and 8 p.m., Eastern Daylight Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background and Need for Rule

Locatable mineral operations on National Forest System (NFS) lands have been regulated under the rules currently codified at 36 CFR part 228, subpart A, since 1974, including provisions for requiring financial assurance for completion of reclamation. Under 36 CFR 228.5 and 228.7, an operator is required to conduct operations in accordance with an approved plan of operations when one is required under 36 CFR 228.4, and with the regulations at 36 CFR 228 Subpart A. Under 36 CFR 228.8, all operations must be conducted to minimize adverse environmental impacts on National Forest surface resources as specified in the regulation, including the requirements to complete reclamation at the conclusion of operations. 36 CFR 228.8(g). Under 228.8(g), reclamation may include continuation of actions required to mitigate or stabilize elements that might otherwise adversely impact surface resources long after exhaustion of the mineral deposit and cessation of mining operations for as long as necessary to accomplish the specified requirements of the regulations to minimize the adverse environmental impacts on National Forest surface resources to the extent feasible.

Current regulations at § 228.13 provide that the authorized officer of the Forest Service may require the operator to furnish a ''bond,'' conditioned upon compliance with the reclamation requirements in current 228.8(g), prior to approval of a plan of operations. The regulations further provide that, if a bond is required by the authorized officer, the operator may elect to furnish cash or negotiable securities of the United States in the amount of the bond in lieu of the bond required by the authorized officer. All operations conducted by the operator can have implications for the ability to successfully complete reclamation. Therefore, the bond, cash, or securities provided by the operator under 36 CFR 228.13 provide financial assurance by securing compliance with and completion of all obligations for environmental protection created by the plan of operations and the regulations. However, the financial assurance mechanisms expressly contemplated by the regulations are limited to surety bonds, cash, and negotiable securities. While the current regulation does not preclude the use of other mechanisms for financial assurance, it does not allow the authorized officer to unilaterally require any form of financial assurance other than a surety bond or provide the operator with the entitlement to use a form of financial assurance other than cash or negotiable securities in lieu of the bond. Where other forms of financial assurance may be more cost effective, or provide greater assurance for long-term obligations, the authorized officer and the operator may negotiate an alternative, but there currently are no regulatory standards for when such alternatives may be required by the authorized officer, must be accepted by the authorized officer in lieu of a bond, or for the acceptable terms of such instruments. In particular, the forms of financial assurance contemplated by the current regulation do not provide for sufficient income generation, which, given the time value of money, can be critically important for long-term financial assurance (LTFA) of the obligations of mine operators to meet the requirements of their plan of operations and the regulations many years into the future. The upfront cost of financial assurance for long-term obligations can be cost-prohibitive when there is no mechanism allowing for income generation on financial assurance funds.

Current Policy at Forest Service Manual (FSM) 6561.5 requires the use of trusts to provide LTFA in lieu of the instruments expressly contemplated in 36 CFR 228.13, when agreed to by the authorized officer and the operator. However, FSM 6561.5 limits the investment of trust funds to U.S. Treasury and other negotiable securities of the U.S. Government and certain bank deposits. These investment options offer such low potential rates of return as to be of little benefit in reducing the upfront cost of funding requirements for LTFA or long-term viability of trust funding. While FSM 6560.5 acknowledges that trust assets must adequately protect the Government from loss, and that allowable trust investments must therefore have limited risk of loss, the current limitations limit the investments in a way that makes it more difficult to adequately fund reclamation obligations.

The ability of the Forest Service to require other forms of financial assurance, or the right of operators to offer other forms of financial assurance in lieu of bonding for long-term obligations that will continue once an operation ceases production will allow for greater financial assurance for the protection of surface resources and reduction of costs to operators. Allowing for a reasonable rate of investment return on LTFA funds will provide greater assurance of the availability of funds in the long-term and reduce the cost of upfront funding.

The interim final rule at 36 CFR 228.13 will allow the authorized officer to require the operator to provide alternative LTFA when necessary to prevent or control damage after operations have ceased. This provision of the regulations will codify the options allowed by FSM 6561.5. Further, the regulation will allow for a broader range of investment options to realize the advantages and benefits of

the use of income-earning accounts. This interim rule does not change requirements for surface resource and environmental protection in the current rule. Rather, it provides additional options for obtaining the financial assurance necessary to be sure that those requirements will be met. The generation of reasonable income streams on financial assurance accounts will provide greater assurance that long-term obligations will be met and will be more cost-effective for operators.

The interim final rule allows trust funds to be comprised of a mix of government bonds and public stocks, consistent with Bureau of Land Management (BLM) regulations at 43 CFR 3809.555 and practices. Future Forest Service Manual direction (manual or handbook) will supply guidance for allowable investment portfolio composition, similar to BLM Handbook Direction at H–3809–1 (2012). Forest Service direction will be adopted after implementation of the proposed rule.

The Forest Service believes this change is needed immediately to clarify options and alternatives for LTFA for mining operations, both to protect the public interest in assuring that long-term obligations for environmental and surface resource protection are met, and to reduce unnecessary, and sometimes cost-prohibitive, financial burdens on operators. The regulation clarifies when alternative forms of financial assurance for long-term operations may be required by the authorized officer or must be accepted by the authorized officer if offered by the operator. Further, the interim final rule sets standards for when such alternative LTFA is acceptable, including the range of allowable investments for income generation.

The current number of operations requiring LTFA and operations approved after adoption of the proposed rule is expected to be small. In 2018, the Forest Service reported 140 mining operations on National Forest system land that are approved for ''production phase'' development, which are the type of operations most likely to require financial assurance for long-term operations and final closure. Of the 140 approved operations, approximately nine, or 6%, are large-scale operations with plans of operation that have a potential to result in the need for post-closure maintenance and may require LTFA to ensure funding for post-closure reclamation. Of the nine approved plans of operations, four have currently identified the need for long-term post-closure water treatment or other maintenance operations (3% of total approved operations; 44% of approved large-scale operations). These four operations carry approximately 49% of the total financial assurance held by the Forest Service (approximately $196M of $400M, as of June 2023). Traditional third-party surety bond financial assurances are in place for the four operations, but lack a sustainable income-generating component, and therefore may not be adequate for assuring long-term post-reclamation needs. The interim final rule, by clarifying requirements and expanding investment options, will increase the array of available options for financial assurance that can provide greater LTFA to protect the interests of the United States and the public, and reduce unnecessary financial burdens on operators.

While the Forest Service views these changes as critically important for the administration of mining operations on the national forests, their impact will be limited primarily to the small number of large locatable mineral operations on National Forest System lands where the needs for funding long-term post-reclamation activities is the greatest. Allowing for an expanded range of investment options with potentially higher rates of return is expected to reduce the risk of public funds being needed to complete reclamation or other long-term obligations in the event of operator default and reduce the upfront cost to operators to provide financial assurance. While the investment options allowed may have greater risk of short-term volatility, appropriate management of trust funds through diversification of investment over the long-term is projected to generate higher rates of return.

The interim final rule also clarifies language in 36 CFR 228.13 regarding the types of financial assurances the agency may require, may accept, and under what circumstances. Currently, 36 CFR 228.13 refers only to bonds and limited instruments that must be accepted by the authorized officer in lieu of bonds which can be interpreted as implying that bonds are required, or at least the preferred, instrument for financial assurances. The interim final rule instead refers to financial assurances, and lists every acceptable mechanism, including instruments that the agency currently accepts in policy (FSM 6561.4) but are not listed in the current regulation, such as irrevocable letters of credit. The agency believes this change to be administrative and clarifying in nature, which will not result in any changes in practice or policy.

Regulatory Certifications

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will determine whether a regulatory action is significant and will review significant regulatory actions. The Office of Information and Regulatory Affairs has determined that this interim final rule is not significant. Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability; to reduce uncertainty; and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Agency has developed this rule consistent with Executive Order 13563.

Congressional Review Act

Pursuant to subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs has designated this interim final rule as not a major rule as defined by 5 U.S.C. 804(2).

National Environmental Policy Act

This interim final rule will amend the Agency's locatable minerals regulations to allow mine operators to secure financial assurance for funding reclamation work through the use a broader range of investment options. Forest Service regulations at 36 CFR 220.6(d)(2) exclude from documentation in an environmental assessment or environmental impact statement ''rules, regulations, or policies to establish service wide administrative procedures, program processes, or instructions.'' The Agency's preliminary assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. A final determination will be made upon adoption of the final rule.

Regulatory Flexibility Act

The Agency considered the impacts of the interim final rule on small entities consistent with requirements of the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Flexibility Enforcement Fairness Act of 1996 (SBREFA), and Executive Orders 13272 (Proper Consideration of Small Entities in Agency Rulemaking). The provisions of the rule are not expected to have

economic effects on small entities, and no separate threshold regulatory flexibility analysis was prepared for this rule.

Small entities potentially affected by the interim rule include small businesses (firms) involved in precious and heavy metal mining (*e.g.,* North American Industry Classification System (NAICS) 2122, iron, gold, silver copper, nickel, lead, zinc, uranium, and other metals), limestone and clay mining and quarrying (NAICS 2123, crushed/broken limestone, kaolin and ball clay, ceramic and refractory minerals, other chemical/fertilizer minerals, and other nonmetallic minerals); and geophysical surveying and mapping (NAICS 541360). A majority (75% to 80%) of existing locatable operations on National Forest System lands fall within the precious and heavy metal sectors, and within the gold ore sector specifically. The interim final rule would apply to the fraction of businesses that engage in locatable mineral development or operations on National Forest System lands that are projected to involve levels of closure and post-closure activities that require operators to provide financial assurances to cover closure or post-closure obligations (costs).

The interim final rule clarifies the types of financial assurance instruments that can be used by operators, and explicitly lists instruments (*e.g.,* irrevocable letters of credit, trust funds) that are omitted in current regulation, though allowed in current policy. The interim final rule allows stocks to be used in the mix of investments forming a trust fund, whereas current regulations limit those investments to United States securities. Allowances for stocks is consistent with current Department of Interior regulations and policy for the Bureau of Land Management (43 CFR 3809.555 and handbook direction at H–3809–1) and Office of Surface Mining Reclamation and Enforcement (30 CFR 942.800). Interest bearing accounts are necessary for providing financial assurances for long-term (*e.g.,* into perpetuity) post-reclamation obligations, and trust funds are likely to be the only viable instrument that the Agency finds acceptable for those situations under the current regulations as well as the interim final rule. However, allowances for stocks can provide operators with access to an expanded range of rates of return for trust fund investments, offering opportunities to establish trust funds with lower initial investment than would be possible under current regulations.

These interim final rule provisions are likely to clarify and expand opportunities for small business operators to establish financial assurances for mine closure and post-closure actions and not expected to result in direct or adverse economic effects to small businesses. The small business operators with substantial closure or post-closure obligations will be a subset of small businesses operating on National Forest System lands. Additional policy for monitoring the performance of trust funds, composition of investment mixes (*e.g.,* types of stocks, investment composition over time), as well as requiring contributions or allowing withdrawals from trust funds in response to trust fund performance, will be addressed through Agency policy direction.

The Agency certifies that the interim final rule will not have a significant impact on a substantial number of small entities.

Federalism

The Agency has considered this interim final rule under the requirements of Executive Order 13132, *Federalism.* The Agency has determined that the rule conforms with the federalism principles set out in this executive order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Agency has concluded that the rule does not have federalism implications.

Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments,* requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications. This includes regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. This interim final rule will amend the Agency's locatable minerals regulations to allow mine operators to secure financial assurance for funding reclamation work through the use a broader range of investment options. The Agency has reviewed this rule in accordance with the requirements of Executive Order 13175 and has determined that this proposed rule would not have substantial direct effects on Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Therefore, consultation and coordination with Indian Tribal governments is not required for this rule.

No Takings Implications

The Agency has analyzed this interim final rule in accordance with the principles and criteria in Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The Agency has determined that the proposed rule would not pose the risk of a taking of private property.

Energy Effects

The Agency has reviewed this interim final rule under Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.* The Agency has determined that the proposed rule would not constitute a significant energy action as defined in Executive Order 13211. The rule is administrative in nature and does not impact Agency decisions about leasing and subsequent development of energy resources on NFS lands.

Civil Justice Reform

The Forest Service has analyzed this interim final rule in accordance with the principles and criteria in Executive Order 12988, *Civil Justice Reform.* After adoption of the rule, (1) all State and local laws and regulations that conflict with the proposed rule or that impede its full implementation would be preempted; (2) no retroactive effect would be given to the proposed rule; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Agency has assessed the effects of this interim final rule on State, local, and Tribal Governments and the private sector. The rule will not compel the expenditure of $100 million or more by any State, local, or Tribal Government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Controlling Paperwork Burdens on the Public

This interim final rule does not contain recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Administrative Procedure Act

Section 553(b)(3)(B) of the Administrative Procedures 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. The Forest Service is promulgating this rule on an interim final basis because the agency has found that notice and public comment procedures are unnecessary and contrary to the public interest.

The agency finds that requiring public notice and comment before this IFR is implemented would be contrary to the public interest because the IFR is expected to help streamline Forest Service review and approval of future critical mineral project proposals. The Infrastructure Investment and Jobs Act (Pub. L. 117–58), E.O. 14017 ''America's Supply Chains,'' and E.O. 13593 ''Addressing the Threat to the Domestic Supply Chain From Reliance on Critical Minerals From Foreign Adversaries and Supporting the Domestic Mining and Processing Industries,'' all direct the agency to process critical minerals approvals timely and efficiently. The changes proposed in this IFR will improve the Forest Service's ability to develop adequate funding for long-term post-closure reclamation activities.

In some cases, the Forest Service has found that arriving at an acceptable funding vehicle has slowed the processing of mineral operations approvals because of the limited number of investment options available under current authorities. This results in slower approval times and increased risk for the agency. The agency has at times experienced challenges in obtaining adequate LTFA because the current investment limitations are a practical barrier to operators: the fixed-income investments do not generate sufficient growth at reasonable initial fund rates, while traditional third-party surety bond financial assurances lack a sustainable income-generating component, and therefore may not be adequate for assuring long-term post-reclamation needs.

The agency has also experienced challenges in getting LTFA because the lack of clarity in the current regulations regarding trust funds creates confusion, which creates a procedural barrier to operators: delays while basic questions and concepts are repeatedly tested. Over time the agency has experienced that many of these mines have increased awareness of long-term operational needs, such as in the case of ongoing operations approved prior to consideration of LTFA as common agency practice. In addition to existing operations that are not able to capitalize a trust fund at fixed income U.S. securities rates, the current rule has significantly slowed approval and processing of new proposals, including for critical minerals such as the nation's only domestic source of cobalt. This revision to 36 CFR 228.13 will help ensure that those projects can achieve adequate LTFA, resulting in more effective and efficient processing of not just critical minerals proposals, but of all mineral operations.

The IFR's additional flexibility will also allow the agency to better assure available funds for continued environmental mitigation and protection, thus removing this potential burden from the taxpayers.

Presenting this revision as a proposed rule and collecting public comment prior to implementation is contrary to public interest because time is of the essence to critical minerals and other mineral proposals struggling to complete the process to obtain adequate LTFA, which delays the production of critical minerals. The interim final rule, by clarifying requirements and expanding investment options, will increase the array of available options for financial assurance that can provide greater long-term financial assurance to protect the interest of the United States and the public, and reduce unnecessary financial burdens on operators.

The agency also believes it is unnecessary to request public comment prior to implementation of this revision to 36 CFR 228.13 because the changes are ministerial in nature and not likely to be controversial. The revised § 228.13 clarifies that trusts can be accepted and removes unnecessary restrictions to investment options. While this revision will greatly increase the agency's ability to better administer the Long-Term Financial Assurance program internally, it does not fundamentally change agency operations. This revision to investment options also brings the Forest Service in line with BLM regulation and policy, successfully in operation since 2001. Because these changes are bringing the Forest Service in line with longstanding BLM practice in this area, and the IFR is simply broadening the array of arrangements that can satisfy the requirements of LTFA, public comment before publication of the rule is unnecessary under the APA.

As noted above, the Forest Service is concurrently accepting comments on this IFR. The Forest Service will consider all comment received in response to this IFR in publishing the final rule.

List of Subjects in 36 CFR Part 228

Bonding, National forests, Public lands-mineral resources.

Therefore, for the reasons set forth in the preamble, the Forest Service amends 36 CFR part 228 as follows:

PART 228—MINERALS

■ 1. The authority citation for part 228 continues to read:

Authority: 16 U.S.C. 478, 551; 30 U.S.C. 226, 352, 601, 611; 94 Stat. 2400.

■ 2. Amend § 228.13 by:
■ a. revising the section heading;
■ b. revising paragraphs (a), (b), (c) and (d); and
■ c. adding new paragraph (e).

The addition and revisions read as follows:

§ 228.13 Financial Assurance.

(a) Any operator required to file a plan of operations shall, when required by the authorized officer, furnish financial assurance for completion of the obligations set forth in these regulations and the approved plan of operations in the amount determined by the authorized officer to be required to provide reasonable financial assurance of such obligations prior to approval of such plan of operations, or by providing blanket assurance for multiple defined operations conducted by the operator such as within a particular State or nation-wide. The operator may elect to provide such financial assurance in the form of any of the following instruments that are acceptable to the authorized officer, singly or in combination:

(1) cash in an amount equal to the required dollar amount of the reclamation cost estimate and the estimated cost of stabilizing, rehabilitating, and reclaiming the area of operations deposited into a Federal depository, as directed by the Forest Service, and maintained therein;

(2) negotiable securities of the United States having market value at the time of deposit of not less than the required dollar amount of the bond;

(3) a surety bond provided by a third party that is certified by the Department of the Treasury and listed in Treasury Circular 570 as financial assurance for the obligations for specific operations, or providing blanket assurance for multiple defined operations conducted by the operator such as within a particular State or nation-wide, and/or;

(4) an irrevocable letter of credit provided by an institution acceptable to the authorized officer.

(b) In determining the amount of the required financial assurance, the authorized officer shall give consideration to the reclamation cost estimate which shall be submitted by the operator prior to the approval of the final plan of operations, and the estimated cost of stabilizing, rehabilitating, and reclaiming the area of operations.

(c) In the event that an approved plan of operations is modified in accordance with § 228.4 (d) and (e), the authorized officer will review the financial assurance for adequacy and, if necessary, will adjust the financial assurance amount to conform to the operations plan as modified.

(d) When reclamation has been completed in accordance with § 228.8(g), the authorized officer will notify the operator that obligations covered by the financial assurance have been met: *Provided, however,* that when the Forest Service has accepted any portion of the reclamation as completed, the authorized officer shall notify the operator of such acceptance and proportionally reduce the required financial assurance amount thereafter to be required for the remaining obligations of the operator.

(e) When an operator is required to continue to operate or maintain certain aspects of the operation after the mine has closed, the authorized officer may require the operator to establish a trust fund to ensure that adequate funds are available for long-term post-closure reclamation activities required by the regulations or the approved plan of operations following mine closure. The authorized officer shall determine which activities may be secured through a trust fund, and which activities may be secured through another form of financial assurance. Establishing a trust fund does not relieve the operator of the responsibility to provide long-term management, maintenance, and reclamation of the site. A trust fund for long-term post closure obligations shall be comprised of financial instruments limited to negotiable securities of the United States Government; State and Municipal securities or bonds; money market funds; certificates of deposits; investment-grade securities; and stock equity shares listed on a national exchange.

Andrea Delgado Fink,

Chief of Staff, Natural Resources and Environment.

[FR Doc. 2023–23526 Filed 10–27–23; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

[Docket No. FWS–HQ–NWRS–2023–0038; FXRS12610900000–234–FF09R20000]

RIN 1018–BG71

National Wildlife Refuge System; 2023–2024 Station-Specific Hunting and Sport Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), expand hunting opportunities on three National Wildlife Refuges (NWRs). We also make changes to existing station-specific regulations in order to reduce the regulatory burden on the public, increase access for hunters and anglers on Service lands and waters, and comply with a Presidential mandate for plain language standards. Finally, the best available science, analyzed as part of this rulemaking, indicates that lead ammunition and tackle have negative impacts on both wildlife and human health. In this rule, Blackwater, Chincoteague, Eastern Neck, Erie, Great Thicket, Patuxent Research Refuge, Rachel Carson, and Wallops Island NWRs each adopt a non-lead requirement, which will take effect on September 1, 2026. While the Service continues to evaluate the future of lead use in hunting and fishing on Service lands and waters, this rulemaking does not include any opportunities increasing or authorizing the new use of lead beyond fall 2026.

DATES: This rule is effective October 27, 2023, except for the amendments to 50 CFR 32.38 (amendatory instruction 5), 32.39 (amendatory instruction 6), 32.57 (amendatory instruction 11), and 32.65 (amendatory instruction 15), which are effective September 1, 2026.

FOR FURTHER INFORMATION CONTACT: Kate Harrigan, (703) 358–2440. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), as amended (Administration Act), closes NWRs in all States except Alaska to all uses until opened. The Secretary of the Interior (Secretary) may open refuge areas to any use, including hunting and/or sport fishing, upon a determination that the use is compatible with the purposes of the refuge and National Wildlife Refuge System (Refuge System) mission. The action also must be in accordance with provisions of all laws applicable to the areas, developed in coordination with the appropriate State fish and wildlife agency(ies), consistent with the principles of sound fish and wildlife management and administration, and otherwise in the public interest. These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the Refuge System for the benefit of present and future generations of Americans.

We annually review hunting and sport fishing programs to determine whether to include additional stations or whether individual station regulations governing existing programs need modifications. Changing environmental conditions, State and Federal regulations, and other factors affecting fish and wildlife populations and habitat may warrant modifications to station-specific regulations to ensure the continued compatibility of hunting and sport fishing programs and to ensure that these programs will not materially interfere with or detract from the fulfillment of station purposes or the Service's mission.

Provisions governing hunting and sport fishing on refuges are in title 50 of the Code of Federal Regulations at part 32 (50 CFR part 32), and on hatcheries at part 71 (50 CFR part 71). We regulate hunting and sport fishing to:

- Ensure compatibility with refuge and hatchery purpose(s);
- Properly manage fish and wildlife resource(s);
- Protect other values;
- Ensure visitor safety; and
- Provide opportunities for fish- and wildlife-dependent recreation.

On many stations where we decide to allow hunting and sport fishing, our general policy of adopting regulations identical to State hunting and sport fishing regulations is adequate to meet these objectives. On other stations, we must supplement State regulations with more-restrictive Federal regulations to ensure that we meet our management responsibilities, as outlined under Statutory Authority, below. We issue station-specific hunting and sport fishing regulations when we open wildlife refuges and fish hatcheries to migratory game bird hunting, upland game hunting, big game hunting, or sport fishing. These regulations may list the wildlife species that you may hunt or fish; seasons; bag or creel (container for carrying fish) limits; methods of hunting or sport fishing; descriptions of areas open to hunting or sport fishing; and other provisions as appropriate.

Statutory Authority

The Administration Act, as amended by the National Wildlife Refuge System Improvement Act of 1997 (Improvement Act; Pub. L. 105–57), governs the administration and public use of refuges, and the Refuge Recreation Act of 1962 (Recreation Act; 16 U.S.C. 460k–460k–4) governs the administration and public use of refuges and hatcheries.

Amendments enacted by the Improvement Act were built upon the Administration Act in a manner that provides an ''organic act'' for the Refuge System, similar to organic acts that exist for other public Federal lands. The Improvement Act serves to ensure that we effectively manage the Refuge System as a national network of lands, waters, and interests for the protection and conservation of our Nation's wildlife resources. The Administration Act states first and foremost that we focus our Refuge System mission on conservation of fish, wildlife, and plant resources and their habitats. The Improvement Act requires the Secretary, before allowing a new use of a refuge, or before expanding, renewing, or extending an existing use of a refuge, to determine that the use is compatible with the purpose for which the refuge was established and the mission of the Refuge System. The Improvement Act established as the policy of the United States that wildlife-dependent recreation, when compatible, is a legitimate and appropriate public use of the Refuge System, through which the American public can develop an appreciation for fish and wildlife. The Improvement Act established six wildlife-dependent recreational uses as the priority general public uses of the Refuge System. These uses are hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

The Recreation Act authorizes the Secretary to administer areas within the Refuge System and Hatchery System for public recreation as an appropriate incidental or secondary use only to the extent that doing so is practicable and not inconsistent with the primary purpose(s) for which Congress and the Service established the areas. The Recreation Act requires that any recreational use of refuge or hatchery lands be compatible with the primary purpose(s) for which we established the refuge and not inconsistent with other previously authorized operations.

The Administration Act and Recreation Act also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

We develop specific management plans for each refuge prior to opening it to hunting or sport fishing. In many cases, we develop station-specific regulations to ensure the compatibility of the programs with the purpose(s) for which we established the refuge or hatchery and the Refuge and Hatchery System mission. We ensure initial compliance with the Administration Act and the Recreation Act for hunting and sport fishing on newly acquired land through an interim determination of compatibility made at or near the time of acquisition. These regulations ensure that we make the determinations required by these acts prior to adding refuges to the lists of areas open to hunting and sport fishing in 50 CFR parts 32 and 71. We ensure continued compliance by the development of comprehensive conservation plans and step-down management plans, and by annual review of hunting and sport fishing programs and regulations.

Summary of Comments and Responses

On June 23, 2023, we published in the **Federal Register** (88 FR 41058) a proposed rule to expand hunting and fishing opportunities at three refuges for the 2023–2024 season. We accepted public comments on the proposed rule for 60 days, ending August 22, 2023. By that date, we received more than 18,500 comments on the proposed rule. More than 95 percent of these comments were identical or nonsubstantive comments that were outside the scope of the proposed rule. We received 326 unique comments, and 228 of those comments were substantive. We discuss the substantive comments we received below by topic. Beyond our responses below, additional station-specific information on how we responded to comments on particular hunting or fishing opportunities at a given refuge or hatchery can be found in that station's final hunting and/or fishing package, each of which can be located in Docket No. FWS–HQ–NWRS–2023–0038 on *https://www.regulations.gov.*

Comment (1): We received several comments expressing general support for the proposed hunting expansions in the rule. These comments of general support either expressed appreciation for the increased hunting access in the proposed rule overall, expressed appreciation for increased access at particular refuges, or both. In addition to this general support, some commenters requested additional hunting and fishing opportunities.On the topic of additional opportunities, a few commenters also noted that the proposed rule had relatively fewer openings and expansions than other rules in recent years.

Our Response: Hunting and fishing on Service lands is a tradition that dates back to the early 1900s. In passing the Improvement Act, Congress reaffirmed that the Refuge System was created to conserve fish, wildlife, plants, and their habitats, and would facilitate opportunities for Americans to participate in compatible wildlife-dependent recreation, including hunting and fishing on Refuge System lands. We prioritize wildlife-dependent recreation, including hunting and fishing, when doing so is compatible with the purpose of the refuge and the mission of the Refuge System.

We will continue to open and expand hunting and sport fishing opportunities across the Refuge System; however, as detailed further in our response to *Comment (2),* below, opening or expanding hunting or fishing opportunities on Service lands is not a quick or simple process. The annual regulatory cycle begins in June or July of each year for the following hunting and sport fishing season (the planning cycle for this 2023–2024 final rule began in June 2022). This annual timeline allows us time to collaborate closely with our State, Tribal, and Territorial partners, as well as other partners including nongovernmental organizations, on potential opportunities. It also provides us with time to complete environmental analyses and other requirements for opening or expanding new opportunities. Therefore, it would be impracticable for the Service to complete multiple regulatory cycles in one calendar year due to the logistics of coordinating with various partners. Once we determine that a hunting or sport fishing opportunity can be carried

out in a manner compatible with individual station purposes and objectives, we work expeditiously to open it.

This also applies to commenter requests for changes in the season dates, days of the week, hours open, methods of take, or other logistical requirements that would align our hunting and fishing regulations more closely with State hunting and fishing regulations, such as requests to allow Sunday hunting where State governments have removed previous prohibitions. The Service is committed to aligning with State regulations as closely as possible, while keeping in mind our conservation mission and unique ecosystem preservation and biodiversity responsibility among public lands, and has revised hundreds of regulations in recent rulemakings in the interest of alignment with State regulations. Nevertheless, we must complete our own evaluation and decision-making processes prior to changing any standing policies and regulations where they differ from newly adopted State regulations. We have completed such evaluations in Virginia for Wallops Island National Wildlife Refuge, where Sunday hunting is now open, and for Chincoteague National Wildlife Refuge, where Sunday hunting is incompatible with other refuge uses. Additional refuges will be evaluated over time.

This rule does contain relatively fewer opportunities than other recent annual rulemakings, but within the wider context of the full history of these annual rulemakings, it is near the median size. The size of our rulemakings always varies from year to year, and there are a few different contributing reasons for the size of this year's rule relative to larger rules such as the 2021–2022 final rule (86 FR 48822; August 31, 2021). First, we successfully streamlined our regulations and aligned with State regulations where possible at many stations in recent years, which means that during this streamlining effort there were many more stations proposing changes than there otherwise would have been in these annual rules. Some of these streamlining and alignment efforts even produced increased access and expanded opportunities, as season dates were extended or methods of take were added for certain NWRs. Second, due to the success of our efforts in recent years to create new hunting and fishing opportunities, there were fewer opening and expansions proposed this year. Many of these opportunities were identified and evaluated over the course of multiple years. This limits the size of our rules in subsequent years because we need time to identify and evaluate more potential openings and expansions. Third, there is ultimately a finite number of compatible hunting and fishing opportunities possible on the Refuge System at a given time; as we approach that limit, the opportunities contained in our annual rulemakings will necessarily decrease. Once we have maximized access throughout the Refuge System, we will only be able to increase access when we acquire new acres.

We did not make any changes to the rule as a result of these comments.

Comment (2): Several commenters expressed general opposition to any hunting or fishing in the Refuge System. Some of these commenters stated that hunting was antithetical to the purposes of a ''refuge,'' which, in their opinion, should serve as an inviolate sanctuary for all wildlife. The remaining commenters generically opposed expanded hunting or fishing opportunities at specific stations.

Our Response: The Service prioritizes facilitating wildlife-dependent recreational opportunities, including hunting and fishing, on Service land in compliance with applicable Service law and policy. For refuges, the Administration Act, as amended, stipulates that hunting (along with fishing, wildlife observation and photography, and environmental education and interpretation), if found to be compatible, is a legitimate and priority general public use of a refuge and should be facilitated (16 U.S.C. 668dd(a)(3)(D)). Thus, we only allow hunting of resident wildlife on Refuge System lands if such activity has been determined compatible with the established purpose(s) of the refuge and the mission of the Refuge System as required by the Administration Act. For the three stations expanding hunting in this rule, we determined that the proposed actions were compatible.

Each station manager makes a decision regarding hunting and fishing opportunities only after rigorous examination of the available information, consultation and coordination with States and Tribes, and compliance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and section 7 of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), as well as other applicable laws and regulations. The many steps taken before a station opens or expands a hunting or fishing opportunity on the refuge ensure that the Service does not allow any opportunity that would compromise the purpose of the station or the mission of the Refuge System.

Hunting of resident wildlife on Service lands generally occurs consistent with State regulations, including seasons and bag limits. Station-specific hunting regulations can be more restrictive (but not more liberal) than State regulations and often are more restrictive in order to help meet specific refuge objectives. These objectives include resident wildlife population and habitat objectives, minimizing disturbance impacts to wildlife, maintaining high-quality opportunities for hunting and other wildlife-dependent recreation, minimizing conflicts with other public uses and/or refuge management activities, and protecting public safety.

The word ''refuge'' includes the idea of providing a haven of safety as one of its definitions, and as such, hunting might seem an inconsistent use of the Refuge System. However, again, the Administration Act stipulates that hunting, if found compatible, is a legitimate and priority general public use of a wildlife refuge. Furthermore, we manage refuges to support healthy wildlife populations that in many cases produce harvestable surpluses that are a renewable resource. As practiced on refuges, hunting and fishing do not pose a threat to wildlife populations. It is important to note that taking certain individuals through hunting does not necessarily reduce a population overall, as hunting can simply replace other types of mortality. In some cases, however, we use hunting as a management tool with the explicit goal of reducing a population; this is often the case with exotic and/or invasive species that threaten ecosystem stability. Therefore, facilitating hunting opportunities is an important aspect of the Service's roles and responsibilities as outlined in the legislation establishing the Refuge System, and the Service will continue to facilitate these opportunities where compatible with the purpose of the specific refuge and the mission of the Refuge System.

We did not make any changes to the rule as a result of these comments.

Comment (3): We received comments from the Association of Fish and Wildlife Agencies on the proposed rule. The Association of Fish and Wildlife Agencies expressed general support for increased access for hunters and anglers, but expressed concern about the individual refuges proposing non-lead requirements that take effect in fall 2026. The Association of Fish and Wildlife Agencies also expressed appreciation for increased communication between the Service and State agencies on the use of lead

ammunition and tackle, and advocated for more collaboration.

Our Response: The Service appreciates the support of, and is committed to working with, our State partners to identify additional opportunities for expansion of hunting and sport fishing on Service lands and waters. We welcome and value State partner input on all aspects of our hunting and fishing programs.

In response to the Association of Fish and Wildlife Agencies, we have not made any modifications to the rule. We appreciate the support for the hunting expansions in this rulemaking and value our shared commitment to compatible hunter and angler access on the National Wildlife Refuge System. On the topic of lead ammunition and tackle use, see our response to *Comment (5),* below, regarding our plan to require non-lead ammunition and/or tackle by fall 2026 at individual refuges. On the topic of collaboration with State agencies in determining the regulations and policies governing lead ammunition and tackle use on the Refuge System, we welcome such coordination and collaboration. We appreciate State agency efforts to educate the public about non-lead ammunition and tackle and to implement voluntary uptake programs encouraging hunters and anglers to voluntarily switch to non-lead ammunition and tackle, and we have long been engaged in similar efforts at our agency. We have also introduced non-lead ammunition and tackle requirements when and where necessary on individual refuges, after consultation with relevant State agencies. For example, all of the non-lead requirements in this rule involved discussions with State agencies throughout the process. Going forward, we will continue to invite input and involvement from our State partners as we continue to evaluate the future of lead use on Service lands and waters as part of an open and transparent process to find the best methods to address lead's impact on human and ecological health.

Comment (4): The majority of commenters expressed concern over the use of lead ammunition and/or lead fishing tackle on Service lands and waters. Nearly all of these commenters expressed support for the non-lead requirements in the proposed rule. Some of these commenters urged the Service to make these requirements effective before 2026. Most of these commenters urged the Service to eliminate, whether immediately or after a set transition period, the use of lead ammunition and tackle throughout the Refuge System. Many commenters expressed concerns about raptor species, including the bald eagle (*Haliaeetus leucocephalus*), and other species that scientific studies have shown to be especially susceptible to adverse health impacts from lead ammunition and tackle.

Our Response: The Service appreciates the concerns from commenters about the issue of bioavailability of lead in the environment and is aware of the potential impacts of lead on fish and wildlife. See, for example, the recent study from the U.S. Geological Survey (USGS) with Service collaboration, Vincent Slabe, et al. ''Demographic implications of lead poisoning for eagles across North America,'' which is available online at *https://www.usgs.gov/news/national-news-release/groundbreaking-study-finds-widespread-lead-poisoning-bald-and-golden.* Accordingly, the Service pays special attention to species susceptible to lead uptake and to sources of lead that could impact ecological and human health.

Historically, the principal cause of lead poisoning in waterfowl was the high densities of lead shot in wetland sediments associated with migratory bird hunting activities (Kendall et al. 1996). In 1991, as a result of high bird mortality, the Service instituted a nationwide ban on the use of lead shot for hunting waterfowl and coots (see 50 CFR 32.2(k)). However, lead ammunition is still used for other types of hunting, and lead tackle is used for fishing on private and public lands and waters, including within the Refuge System.

Due to the continued lead use outside of waterfowl hunting, there remains concern about the bioavailability of spent lead ammunition (bullets) and fishing tackle on the environment, the health of fish and wildlife, and human health. The Service is aware of fish and wildlife species, including endangered and threatened species, that are susceptible to the build-up of lead in their systems coming directly from their food sources or secondhand through the food ingested by their food sources. There is also evidence that some species are susceptible to direct ingestion of lead ammunition or tackle due to their foraging behaviors. For example, the Service recognizes that ingested lead fishing tackle has been found to be a leading cause of mortality in adult common loons (Grade, T. et al., 2017, Population-level effects of lead fishing tackle on common loons. The Journal of Wildlife Management 82(1): pp. 155–164). The impacts of lead on human health and safety have been a focus of several scientific studies. We are familiar with studies that have found the ingestion of animals harvested via the use of lead ammunition increased levels of lead in the human body (*e.g.,* Buenz, E. (2016). Lead exposure through eating wild game. American Journal of Medicine, 128: p. 458).

It is because of lead's potential for ecological health impacts that, in this rulemaking, the Service has continued to take a ''measured approach in not adding to the use of lead on refuge lands'' (see 87 FR 35136, June 9, 2022). Accordingly, the opportunities in this final rule either do not involve the use of ammunition or tackle (*i.e.,* waterfowl hunting or archery), already require the use of non-lead ammunition or tackle, or are being authorized at refuges that will require the use of non-lead ammunition or tackle by fall 2026. This measured approach is also part of the Service's larger commitment to evaluating the use of lead in order to determine what is the best course for the future of lead use throughout the Refuge System and whether lead use is addressed going forward through non-lead requirements or different methods, including, but not limited to, national action, individual refuge actions, or some combination.

In response to commenters' position that 3 years is too long for non-lead use requirements at individual stations to take effect, the Service did not make any changes to the rule. Each individual station that will require non-lead ammunition and/or tackle starting in fall 2026 determined that this timing would best serve the refuge's objectives, capacities, purposes, and mission. These determinations were made to the exclusion of both shorter and longer time frames for hunters and anglers to transition to the use of non-lead equipment. These determinations were made with consideration of all impacted parties (*e.g.,* refuge wildlife, hunters and anglers, other visitors, refuge law enforcement) and balancing the Service's interest in reducing the potential for adverse lead impacts against the Service's interest in not placing an undue compliance burden on hunters and anglers. If, in the future, the Service sets any non-lead requirement timetables for one or more refuges, we will similarly consider the input of all relevant stakeholders and the impacts of our decision on all relevant stakeholders as we weigh the competing interests and reach the determination that best serves the public interest.

In response to the commenters urging the Service to eliminate the use of lead ammunition and fishing tackle throughout the Refuge System, the

Service is committed to doing what best serves the public interest and our conservation mission, including facilitating compatible wildlife-dependent recreational hunting and fishing. As we committed to do in our 2021–2022 rulemaking (see 86 FR 48822 at 48830, August 31, 2021) and our 2022–2023 rulemaking (see 87 FR 57108 at 57122, September 16, 2022), the Service has been and continues to evaluate lead use in hunting and fishing on Service lands and waters. The reason this rule is crafted such that it is not expected to add to the use of lead on refuges beyond 2026 is so that the Service can continue to evaluate the future of lead use and to seek input from partners, as we conduct a transparent process to determine what actions and methods are appropriate for addressing lead's potential for adverse environmental and ecological health impacts.

We did not make any changes to the rule as a result of these comments.

Comment (5): A substantial number of commenters expressed opposition to the Service requiring the use of non-lead ammunition and/or fishing tackle on Service lands and waters. This included multiple campaigns of duplicate comments and 47 unique comments. Some of these commenters simply expressed a general opposition to the concept of non-lead requirements, but the rest put forward one or more points in arguing against non-lead ammunition and/or tackle requirements. The concerns collectively expressed by these more substantive comments are addressed in *Comment (6)* through *Comment (14),* below.

Our Response: The Service has allowed, and with the promulgation of this rule continues to allow, the use of lead ammunition and/or tackle in hunting and sport fishing in most of the Refuge System. The vast majority of stations and the vast majority of individual hunting and fishing opportunities currently permit lead use, which follows our general alignment with State regulations, as the vast majority of States permit the use of lead ammunition and tackle. Lead ammunition and tackle are currently allowed where we have previously determined the activity is not likely to result in dangerous levels of lead exposure. However, the Service has made clear that we take the issue of lead use seriously, and as the stewards of the Refuge System, we are evaluating what is best for the resources belonging to the American public regarding the future use of lead ammunition and tackle on Service lands and waters. The best available science, analyzed as part of this rulemaking, demonstrates that lead ammunition and tackle have negative impacts on both human health and wildlife, and those impacts are more acute for some species.

We did not make any changes to the rule as a result of these comments.

Comment (6): Many of the comments opposed to regulations concerning the use of lead ammunition and tackle questioned the sufficiency of scientific support for non-lead requirements. Some of the commenters also claimed there is specifically a lack of scientific evidence of ''population-level'' lead impacts and this means non-lead requirements are unwarranted, including one comment suggesting that ''population-level'' impact requires ''a species-specific population decline.'' Other commenters raised concerns that the available scientific studies were not conducted at the physical site of the individual refuges implementing non-lead requirements.

Our Response: We refer commenters concerned about scientific evidence in support of the rulemaking to the analyses of environmental impacts in the NEPA and ESA section 7 documentation for each refuge in the rulemaking and the cumulative impacts report accompanying the rulemaking. For our NEPA and ESA section 7 analyses, we considered peer-reviewed scientific studies evaluating the impacts of lead to humans, to wildlife generally, and to specific species—including endangered and threatened species and species especially susceptible to lead ammunition or tackle exposure. While this evidence is not determinative as to whether non-lead ammunition and tackle should be required in all cases, given the full range of factors to consider on the topic of lead use, it is inaccurate to claim that there is no scientific evidence of adverse impacts to human or ecological health from lead ammunition and tackle or that the Service has not presented such evidence as part of this rulemaking. Each refuge in this rule used the best available science and the expertise and sound professional judgment of refuge staff to determine that our management strategies, including promulgated non-lead requirements, are based on sound science and the specific circumstances of that individual refuge.

Moreover, we also reject the related claim that scientific evidence of so-called ''population-level'' impacts to wildlife is both a prerequisite to Service action and lacking in the available science. Depending on the situation, we may manage wildlife at the ''population level'' or at the ''individual level,'' such as acting to protect individuals of an endangered or threatened species. Similarly, depending on the situation, we may adopt regulations, policies, or practices that respond to or prevent adverse impacts at the population level or to individual animals and plants. In fact, there are clear cases where we need to act preventatively or early to control invasive species, pests, or animal diseases, since they are much more difficult to eradicate when there is ''population-level'' damage. ''Population-level'' impacts are not necessary for regulation to the exclusion of any other factors, although in the past the Service and others have regulated lead use based, at least in part, on addressing impacts to whole populations, as demonstrated impacts to waterfowl populations and the population of California condors prompted the 1991 nationwide prohibition on waterfowl hunting with lead ammunition and the 2019 prohibition on hunting with lead ammunition in California, respectively. In any case, the scientific literature demonstrates that lead use has ''population-level'' impacts.

There is evidence of population-level impacts and potential population-level impacts to waterfowl and upland game bird species from lead fishing tackle and lead ammunition through direct ingestion. Lead fishing tackle presents a risk of lead poisoning to many waterfowl species, including loons and swans (Pokras and Chafel 1992; Rattner et al. 2008; Strom et al. 2009). The primary concerns are discarded whole or fragmented lead sinkers, as well as other lead tackle and even lead ammunition released into the water, that rest on river and lake bottoms where diving birds ingest them alongside pebbles, as pebbles are necessary to break down food through grinding in their digestive systems. This results in lead poisoning because the grinding action breaks down the pieces of ingested lead into fine lead particles inside of the birds that can then enter their blood streams. Studies have consistently found impacts of ingested lead fishing tackle are a leading cause of mortality in adult common loons (Pokras and Chafel 1992; Scheuhammer and Norris 1995; Franson et al. 2003; Pokras et al. 2009; Grade et al. 2017; Grade et al. 2019). Strom, et al., assessed lead exposure in Wisconsin birds and found that approximately 25 percent of the trumpeter swan fatalities from 1991 through 2007 were attributed to ingested lead (Strom et al. 2009). Also, lead ammunition discarded on land presents a similar risk of lead poisoning from upland game birds swallowing

discarded ammunition alongside the pebbles they use for digestion.

Another source of population-level impacts and potential population-level impacts from lead is indirect ingestion by birds of prey and other scavengers from consuming animals shot with lead ammunition. The primary concerns for birds of prey are lead fragments from lead ammunition that remains in the carcasses and gut piles of hunted animals that are scavenged by these birds. The fine fragments of lead, observable in x-rays of harvested game animals, are ingested because they are embedded in the meat and other animal tissues being scavenged and then enter the digestive systems and blood streams of the birds of prey. Many studies have looked at the impacts of this lead exposure to eagle health (see, *e.g.,* Kramer and Redig 1997; O'Halloran et al. 1998; Kelly and Kelly 2005; Golden et al. 2016; Hoffman 1985a, 1985b; Pattee 1984; Stauber 2010). This includes the recent study, published in 2022, from the USGS with Service collaboration, Vincent Slabe, et al. ''Demographic implications of lead poisoning for eagles across North America,'' which is available online at *https://www.usgs.gov/news/national-news-release/groundbreaking-study-finds-widespread-lead-poisoning-bald-and-golden.* This study explicitly finds that lead poisoning is ''causing population growth rates to slow for bald eagles by 3.8 percent and golden eagles by 0.8 percent annually.'' These growth-slowing impacts to populations are statistically significant and, in the case of bald eagles, are occurring for a species that was previously endangered and is still in the process of recovering to historical levels. Thus, it is inaccurate to claim there are not known ''population-level'' impacts from lead use.

A few commenters offer a definition that would leave out these effects to eagles in claiming that ''population-level'' impact requires ''a species-specific population decline.'' This definition, however, is flawed in specifying that a species must be in overall decline, because overall decline tells us nothing about the amount of impact lead is having on a species, and even the amount of impact must be considered in a larger context. First, the exact same size of adverse impact from lead use to a population can be present whether the species is in decline, stable, or growing overall because many other factors impact populations. To illustrate, a -3 percent impact to a species from lead could reduce growth if all other factors would otherwise produce 5 percent growth ($5-3=2$); could prevent growth if all other factors would otherwise produce 3 percent growth ($3-3=0$); and could increase decline if all other factors would otherwise produce a 1 percent decline ($-1-3=-4$). Second, for similar reasons, in the case of impacts of different sizes there could be a larger impact to a species experiencing overall growth than to a species experiencing an overall decline. To illustrate, a large -5 percent impact might not be part of an overall decline, such as when the species would otherwise be growing at 7 percent ($7-5=2$), while a smaller -0.01 percent impact might be part of an overall decline, such as when the species would otherwise be declining at -3 percent ($-3-0.01=-3.01$). Thus, overall decline alone tells us nothing about the impact of lead use, or any other individual factor, on a species population. Furthermore, the Service would not rely even on the size of the impact to a population alone, as the same impact can be of greater or lesser concern, depending on the status of the species (*e.g.,* abundant species, recovering species, endangered or threatened species), the source of the impact (*i.e.,* sources inherent to hunting, such as gun noise and hunter foot traffic, or sources that can be eliminated from hunting activities, such as lead use, off-road vehicles, and litter), the trade-offs involved in addressing the impact (*i.e.,* impediments to conservation are prioritized over costs to hunters and anglers, which are prioritized over costs to commercial users, with respect to avoiding trade-offs), and other factors. These are the reasons why the Service does not let our decision making, when addressing impacts to wildlife health, rely solely on the concept of ''population-level'' impacts.

Similarly, the Service also rejects the notion advanced by multiple commenters that the available scientific evidence must be site-specific, in the sense that a given study was conducted at the physical location of the refuge in question or is otherwise tied to the particular refuge and, by extension, the hunting and fishing activities and the wildlife occurring there. This idea that the Service must demonstrate that the ''units in question have experienced a particular problem with lead exposure'' is inconsistent with effective conservation science and misunderstands the Service's mission and statutory obligations. The commenters' position is inconsistent with effective conservation science because it ignores fundamental scientific concepts of statistical sampling and extrapolation. While there can be important regional and local differences in many threats to wildlife, in science-based management of wildlife it is standard practice to use professional expertise to account for any such differences while applying studies where the underlying data represent a representative sample of the population or a population from a different region or locality. In addition to being sound, widely accepted approaches, the use of statistical sampling and extrapolation are critical to conservation science, as it would be impractical, if not impossible, for researchers to directly study widely distributed wildlife species in every location where they occur. Instead, studies are carefully designed to maximize extrapolation, and wildlife biologists account for local differences when applying study results. With respect to the non-lead requirements in this rulemaking, expert Service personnel ensured valid extrapolation, and some of the cited studies, including the USGS study of bald and golden eagles, took statistical samples nationwide to ensure nationwide applicability of the results.

Additionally, site-specific scientific studies are not required for any other aspect of our wildlife management and to require them would operate opposite our established processes and statutory obligations. First, individual refuges routinely use scientific studies that utilize statistical sampling and/or are expertly extrapolated to inform all our refuge management practices. The Service employs this approach when analyzing highly localized actions, such as altering waterways and hydrology; controversial actions, such as pest management; and difficult-to-reverse actions, such as species reintroductions. There is nothing distinguishing the question of permitting or prohibiting lead use from other management action determinations that have impacts on wildlife or ecosystem health that necessitates departing from the Service's typical approach to ensuring our management is guided by the best available science and sound professional judgment. Moreover, the Service is not willing to consider site-specific science as a precondition for our management actions, as this would effectively grind management to a halt. The Service cannot feasibly conduct localized studies for every routine action, including allowing refuge visitation, controlling invasive species, and opening and expanding hunting and fishing opportunities. In fact, this is precisely why the applicable statutes and regulations specify use of the best

available science, which ensures that informed decisions are made with the best data at hand. We cannot operate under the requirement that site-specific scientific evidence must be obtained and used for management actions, especially in this case where the best available scientific evidence has a clear consensus.

Second, the Service's mission and statutory obligations require refuges to be closed to hunting and fishing by default, and this changes only when we have determined they are compatible with our conservation mission and have promulgated regulations to open designated areas to hunting and fishing. Hunting and fishing access and opportunities are thus constrained by the regulations to only those activities that are compatible. Thus, the Service has an obligation to demonstrate, using the best available science, that any given aspect of hunting or fishing on the Refuge System is compatible with our mission. The Service has also built into our compatibility process the need to reevaluate compatibility determinations after a set period, either 10 or 15 years, depending on the use, because new science or new conditions could compel the Service to change our compatibility determinations. In the case of the use of lead, our past determinations that lead ammunition and lead tackle were permissible to use on Refuge System lands does not change this fundamental structure of our processes. The use of lead ammunition and tackle, like any other visitor activity, can only be allowed on a refuge if, and only for as long as, the refuge applies the best available science and sound professional judgment to find it compatible. The commenters' suggestion would require that the use of lead be assumed compatible if used historically is therefore counter to our mission and statutory obligations. The Service will continue to revisit our compatibility determinations, as required, while considering the best available science and applying sound professional judgment. Similarly, refuge managers have the well-established authority to temporarily and immediately close refuge activities, including hunting and fishing opportunities, in the interest of wildlife health or public safety. This emergency authority also recognizes that our mission requires us to prioritize wildlife conservation over human activities, even if they have been previously authorized, whenever new information or new conditions bring the two into conflict. The Service is weighing all relevant factors in determining the best approach to lead use, but requiring that refuges prove adverse site-specific impacts before closing to certain human activities is inconsistent with our compatibility process.

We did not make any changes to the rule as a result of these comments.

Comment (7): Many commenters opposed to requirements to use non-lead ammunition and tackle claimed non-lead ammunition and non-lead tackle are more expensive than lead ammunition and tackle. Some of these commenters further expressed the concern that non-lead ammunition and tackle requirements ''price people out'' of participating in hunting and fishing.

Our Response: We do not agree that non-lead ammunition and tackle are prohibitively expensive, especially in comparison to lead ammunition and tackle. However, we recognize that there could be some cost burden of compliance for hunting and fishing opportunities where non-lead ammunition or tackle is required. For example, non-lead ammunition is very close in price to premium lead ammunition but can be more expensive than some lead ammunition. Notably, the Maine Department of Inland Fisheries and Wildlife and others have recognized that this cost difference is less than $10 per box of ammunition, with boxes typically lasting multiple hunting seasons (see online at *https://www.maine.gov/ifw/hunting-trapping/hunting/nonlead-ammunition.html*). When we have restricted lead use, we have first ensured that the ecological health and conservation benefits outweigh any potential for cost burden on hunters and anglers. We are confident that non-lead ammunition and tackle are not cost-prohibitive, as hunting and angling continues on all Refuge System stations where we have restricted lead use. Moreover, we have not seen declines in hunting use attributable to non-lead ammunition requirements. In other words, hunting-use day declines at stations that require non-lead ammunition do not appear to deviate from general trends of declining hunting participation that affect all stations in the Refuge System. We similarly have not seen growth slowed at stations requiring non-lead tackle such that it is out of step with general growth trends in angler participation. Where we have seen meaningful declines is in the price of non-lead alternatives, as there has been a continuous trend for years of decreasing prices for non-lead ammunition and tackle alternatives, and the 1991 nationwide ban on lead ammunition for waterfowl hunting shows that regulations can spur innovation and production, which brings the prices down for non-lead options.

Finally, even though the cost burden of compliance with non-lead ammunition and tackle requirements on individual refuges is not onerous, the Service is considering various measures to incentivize hunters and anglers to transition from lead to non-lead ammunition and tackle and mitigate the costs of the transition. The Service would focus any such efforts toward low-income and subsistence hunters and anglers who stand to be most impacted by any additional costs in obtaining non-lead rather than lead ammunition and tackle. The Service takes this environmental justice concern seriously. We look forward to working closely with our State agency and hunting and fishing organization partners to potentially implement future initiatives and programs to mitigate the costs of and incentivize the transition for these groups as part of our transparent process of finding the best solution to lead use impacts.

We did not make any changes to the rule as a result of these comments.

Comment (8): Many commenters opposed to non-lead ammunition and tackle requirements asserted that there is limited availability of non-lead ammunition and non-lead tackle compared to that of lead ammunition and tackle, such that requiring non-lead ammunition and tackle would prevent people from participating in hunting and fishing. Some of these commenters further noted that the availability of non-lead ammunition is more limited for older models of firearms than it is for newer models. A few commenters also, tangentially to the topic of availability, claimed that the Gun Control Act of 1968 (GCA; 18 U.S.C. 921 *et seq.*) and associated Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) regulations concerning armor piercing ammunition hinder the production and thus availability of non-lead ammunition.

Our Response: We do not agree that non-lead ammunition and tackle are insufficiently available to hunters and anglers in localities where we have restricted the use of lead ammunition or tackle, either in the past or through this rulemaking. However, we recognize that there could be some compliance burden in identifying and locating non-lead ammunition and tackle for hunting and fishing opportunities, where required. Where we have restricted lead use in the past or will restrict it through this rulemaking, we have ensured that the ecological health and conservation benefits outweigh any potential for compliance burden on hunters and

anglers, including the ease of locating available non-lead ammunition and tackle. As with the costs of non-lead options, for opportunities where non-lead ammunition and tackle are required, the Service has not seen declines in hunting or fishing participation that can be attributed to non-lead ammunition and tackle being less widely available than lead ammunition and tackle. Also, as with costs, there are existing trends of increasing availability of non-lead alternatives, and the 1991 national ban on lead ammunition for waterfowl hunting demonstrates that regulations requiring the use of non-lead ammunition can promote increased availability. Finally, the same types of programs that the Service is considering employing to mitigate transition costs and incentivize transition to non-lead alternatives would also help to address concerns about availability. The Service would focus any such efforts toward low-income and subsistence hunters and anglers who stand to be most impacted by any lack of availability when seeking to obtaining non-lead ammunition and tackle. The Service takes this environmental justice concern seriously. We look forward to working closely with our State agency and hunting and fishing organization partners to potentially implement future initiatives and programs to mitigate non-lead ammunition and tackle availability concerns and incentivize the transition for these groups as part of our transparent process of finding the best solution to lead use impacts.

Additionally, we recognize that non-lead ammunition may be less available than lead ammunition, in general, for some older models of firearms, as well as certain calibers. Where lead use is restricted, this could theoretically be an obstacle to participation in certain hunting opportunities, depending on method of take restrictions. However, non-lead options are already increasing and can be expected to continue to increase, including options for older firearm models and less commonly used calibers. In the case of the individual refuges in this rule that will require non-lead ammunition use by fall 2026, appropriate non-lead ammunition is available for each type of hunting (*i.e.,* migratory bird, upland game, and big game) and each individual hunting opportunity such that hunters will still be able to participate in all of the opportunities at these refuges. In the future, the Service will remain cognizant of the need to be sure that there are appropriate non-lead options in the market for any given opportunity for which we decide to require non-lead ammunition. We will also ensure the same for fishing opportunities and any potential requirement for non-lead fishing tackle.

Finally, the claim that the Gun Control Act of 1968 (GCA) and associated ATF regulations concerning armor piercing ammunition hinder the production and thus availability of non-lead ammunition is beyond the scope of this rulemaking. Moreover, the Service lacks any authority to change provisions of the GCA or associated ATF regulations. The Service does, however, believe that the ATF's existing framework for exemptions to the definition of armor piercing ammunition for ammunition that is ''primarily intended to be used for sporting purposes,'' as explicitly authorized by the GCA, should be sufficient to allow for the availability of non-lead ammunition for hunters (see the ATF Special Advisory available online at: *https://www.atf.gov/news/pr/armor-piercing-ammunition-exemption-framework*).

We did not make any changes to the rule as a result of these comments.

Comment (9): Some commenters objecting to non-lead ammunition and tackle requirements claimed non-lead ammunition and non-lead tackle do not perform as effectively as lead ammunition and lead tackle.

Our Response: We do not agree and find that non-lead ammunition and tackle performs at least as effectively as lead ammunition and tackle. Some hunters and anglers on the Refuge System currently use non-lead ammunition and tackle, both voluntarily and as required by regulation, without any documented difference in success rates. In fact, the Service has, by policy since 2016, used non-lead ammunition for wildlife management when lethal control is necessary and has not found the performance of non-lead ammunition to impede these management activities in any way. As part of our hunter education efforts, many refuges offer field demonstrations of the effectiveness of non-lead ammunition. Scientific studies of effectiveness have supported this informal empirical evidence and found that non-lead ammunition performs as effectively as lead ammunition (see ''Are lead-free hunting rifle bullets as effective at killing wildlife as conventional lead bullets? A comparison based on wound size and morphology,'' Trinogga, et al., Science of The Total Environment. Volume 443, 15 January 2013, pp. 226–232 (available online November 25, 2012) and ''Performance of Lead-Free versus Lead-Based Hunting Ammunition in Ballistic Soap,'' Gremse, et al., PLoS One. 2014; 9(7): e102015 (published online July 16, 2014)). There is no scientific evidence for the claimed differences in performance between non-lead and lead ammunition and tackle available on the market today. In fact, non-lead ammunition has a demonstrable performance advantage in that hunters kill only what they shoot because, unlike lead ammunition, non-lead ammunition will not poison non-target species. Where the Service restricts the use of lead on the Refuge System, there is no compliance burden on hunters and anglers in the form of reduced performance of ammunition or tackle.

We did not make any changes to the rule as a result of these comments.

Comment (10): Some commenters opposed to non-lead ammunition and tackle requirements argued that any switching from lead ammunition and tackle to non-lead ammunition and tackle should be voluntary. Among these commenters advocating that the use of non-lead ammunition should remain voluntary were both those who felt there is a need for large-scale uptake of non-lead ammunition and tackle, and those who felt it should be simply a preference decision for each hunter and angler. A few commenters further expressed that voluntarily adopting non-lead ammunition and tackle should be encouraged through hunter education and/or incentives for hunters to transition to non-lead options.

Our Response: The Service has encouraged and will continue to encourage voluntary use of non-lead ammunition and tackle but will also impose regulatory requirements when and where necessary. For many years, the Service has encouraged voluntary use of non-lead ammunition and tackle through our hunter and angler education programs, which have included providing scientific information about the harm lead can do and demonstrating the performance of non-lead ammunition. Voluntary adoption of non-lead ammunition and tackle is an excellent way for hunters and anglers to demonstrate commitment to the ideals of avoiding harm to non-target species, fair chase, and serving as the original conservation stewards of our country's natural resources. The Service appreciates each and every one of the hunters and anglers who have voluntarily made the switch to non-lead ammunition and tackle, whether for their own health, their family's health, or the health of wildlife. Going forward, the Service will continue to urge voluntary use of non-lead ammunition and tackle. While the Service is in the

process of evaluating the future of lead use, even if our determination were ultimately that lead use on the Refuge System needs to end, the Service would still consider all viable methods for achieving that outcome, including encouraging voluntary transition to non-lead ammunition and tackle. At the same time, we note that years of efforts toward educating hunters and encouraging non-lead use by the Service and other organizations have not yielded a significant transition to non-lead ammunition and tackle, despite some localized success stories.

The commenters' suggestion of providing incentives could be a viable tool, although it will be important to construct a fair and targeted incentive structure for individual hunters and anglers. These types of programs are under consideration, not only within the context of non-lead regulatory requirements, but may also be used more broadly to encourage voluntary use of non-lead alternatives and other method(s) of addressing lead issues.

The Refuge System, and all Service lands and waters, are different from private, State, and even other Federal public lands. We have legal obligations to prioritize wildlife health and biodiversity, to consider the compatibility of new and ongoing hunting and fishing activities, and to assess the potential impact of these activities on the natural resources under our jurisdiction. Although voluntary uptake may be part of a future with multiple methods of addressing lead use issues, the history of low compliance with voluntary adoption of non-lead ammunition and tackle prompts the Service to consider regulatory requirements to ensure compatibility. At this time, the Service is continuing to evaluate the future of lead use through an open and transparent process with input from a broad array of partners and stakeholders about how best to secure the appropriate future for the use of lead. We invite ideas and coordination from all the organizations that commented recommending voluntary uptake and/or are engaged in efforts to encourage volunteer uptake of non-lead ammunition and tackle.

We did not make any changes to the rule as a result of these comments.

Comment (11): A few commenters pointed to sources of lead in the environment, other than hunting and fishing with lead ammunition and tackle (*e.g.,* naturally occurring lead in the ground, lead paint, past use of leaded gasoline and pesticides, and discarded galvanized hardware). These commenters asserted that the Service should not have non-lead ammunition and tackle requirements because these other sources of lead cause negative health impacts for fish and wildlife.

Our Response: While there are of course other potential sources of lead in the environment, including other sources that may be bioavailable to wildlife, the Service does not see this as diminishing the importance or conservation benefits of requiring the use of non-lead ammunition and tackle, when and where necessary. While these other sources of lead vary in the degree of risk that they could present to wildlife, the Service is duly concerned by the health risks from any potential source of lead exposure for wildlife and humans. There are likely benefits to be had from efforts to address each of these sources in turn, but that is generally beyond the scope of this rulemaking.

Moreover, these other potential sources of lead do not change the fact that the best available science has drawn a clear link between the use of lead ammunition and tackle and its ecological health impacts. In fact, the study from Slabe, et al., cited earlier in our response to *Comment (6),* provides strong evidence that not only is there an impact to eagles from lead ammunition specifically, but there is also strong evidence that it represents the most important source of lead exposure for the species studied (Slabe 2022). Essentially, the study demonstrated that the highest rates of acute lead poisoning in eagles, measured by liver lead concentrations, corresponded in terms of timing with the use of lead ammunition in the form of a nationwide spike in lead poisoning in winter months in the midst of hunting seasons. To the extent other sources of lead do bear on our decisions about lead ammunition and tackle use, these additional lead sources in fact weigh in favor of lead use restrictions, as lead can accumulate in wildlife from repeated exposure from one or multiple sources (see, *e.g.,* Behmke 2015). This applies both to the sources mentioned by commenters and additional sources that were not mentioned, such as coal-fired power plants and certain heavy industry, including smelting (see Behmke 2015). Similarly, the Service is also not discouraged from requiring the use of non-lead ammunition and tackle, where appropriate, by the continued use of lead ammunition and tackle for hunting and fishing on nearby State and privately held lands and waters. The Service will act to address threats, including from visitor uses, as necessary within our authority, in the interest of our conservation mission even if, and often especially when, human activities outside of refuge borders present similar threats.

We did not make any changes to the rule as a result of these comments.

Comment (12): One comment opposed to non-lead ammunition and tackle requirements maintained that lead ammunition and tackle are made of an inorganic form of lead that poses less risk of harm to humans or animals.

Our Response: While inorganic lead presents a low risk of adverse health impacts while it retains its solid, molded form (*i.e.,* anglers face relatively little risk from handling lead tackle), the basis for concern about lead ammunition and tackle is that there are multiple ways for such lead to become harmful to human and ecological health. Organic lead (*i.e.,* the banned gasoline additive tetramethyl lead) is more dangerous than inorganic lead because it can be absorbed through the skin. Yet, inorganic lead can also have serious impacts in certain forms (*e.g.,* fragments and particles) and once inside an animal. First, as briefly described in response to *Comment (6),* lead ammunition, including bonded lead ammunition, fragments when it hits an animal, and this distributes tiny pieces of lead within a wide radius in the soft tissues of the harvested animal (see ''Fragmentation of lead-free and lead-based hunting rifle bullets under real life hunting conditions in Germany,'' Trinogga et al., Ambio. 2019 Sep; 48(9): 1056–1064 (published online March 23, 2019)). These tiny fragments of lead are then consumed by scavenger species eating carcasses or gut piles left behind or humans eating the game meat. In this tiny, fragmented form and acted on by digestive enzymes and acids, the lead derived from ammunition can then shed particles that enter the blood stream and affect systems throughout the body, presenting both chronic and acute health risks. Second, as briefly described in response to *Comment (6),* lead ammunition and tackle that is deposited along shores or at the bottom of bodies of water can be ingested by several species of birds that forage in these locations for pebbles, as pebbles are necessary to break down food through grinding in a special organ of their digestive systems called a gizzard. This grinding process, along with digestive acids and enzymes that accompany food into the gizzard, can easily break down lead ammunition and tackle into fragments and cause it to shed particles, just as the process breaks down the stones and shells the birds intended to ingest. These lead particles are then able to enter the bloodstream and affect systems throughout the body, presenting both chronic and acute

health risks. Third, lead ammunition and tackle that ends up discarded in bodies of water may begin to dissolve and thus introduce lead particles into the water that present both chronic and acute health risks to both aquatic animals living in the water and terrestrial animals drinking from the water. This process requires high acidity in the water that dissolves lead ammunition or tackle, and it is essentially the same concern as the problem of corrosion from acidic water in lead water pipes. These particles of lead dissolved into the water are easily taken up into the bloodstream as they pass through digestive systems. It is through these known processes that lead ammunition and tackle present a risk, and the best available scientific evidence indicates that these processes are occurring at rates that are causing negative impacts on the health of both certain wildlife species and humans, and those impacts are more acute for some species. Thus, we seriously consider the impact of inorganic forms of lead, such as lead ammunition and tackle, on wildlife and human health.

We did not make any changes to the rule as a result of these comments.

Comment (13): Several commenters who object to the regulation of lead ammunition and tackle expressed nonsubstantive concerns centered on their views about the constitutionality and/or legality of the Service creating non-lead ammunition and tackle requirements through our regulations, or of any agency regulation. Several commenters, instead or in addition, offered nonsubstantive concerns about their personal general projections of impacts to the ammunition and tackle industry and the broader economy.

Our Response: The Service thoroughly addressed these and similar concerns in our 2022–2023 final rule (see 87 FR 57108 at 57117–57119, September 16, 2022). Our position remains the same on these topics in this 2023–2024 rulemaking.

We did not make any changes to the rule as a result of these comments.

Comment (14): A few commenters expressed concerns about the availability of copper for use in ammunition, as copper is one of the alternatives to lead used for non-lead ammunition. The comments expressed concern that due to limited sources of copper and demand for copper for other uses, an increase in demand for copper for ammunition from non-lead ammunition requirements may not be possible or could drive up the cost of non-lead ammunition.

Our Response: These concerns are outside the scope of this rulemaking and thus nonsubstantive. It is outside the expertise of the Service and the scope of this rule to speculate about the current or future availability of copper, or how it could affect prices for goods made using copper. There are, however, two things the Service can say on this topic. First, by requiring the use of non-lead ammunition at eight individual refuges beginning in fall 2026 in this rule, the Service is in no way specifically requiring the use of copper ammunition. Second, as noted above in our response to *Comment (8),* the non-lead ammunition regulations in this rulemaking impact a small portion of the market for ammunition.

We did not make any changes to the rule as a result of these comments.

Comment (15): We also received several comments concerning regulations for the use of and training of hunting dogs at Silvio O. Conte National Fish and Wildlife Refuge (NFWR). Two of these comments urged us to expand the season for dog training to align it with regulations in the relevant States. The majority of these comments, however, objected to the Service removing the special use permit requirement for those training or using more than two dogs, with some expressing the sentiment that any use of hunting dogs is inappropriate on Service lands.

Our Response: All uses proposed as part of this rulemaking or otherwise authorized as part of hunting and fishing programs in the Refuge System are thoroughly assessed for compatibility with other visitor uses, the legislated purposes for which the refuge was established, and the Service's mission. Where authorized, the use of hunting dogs is carried out safely and without significant impacts to the environment or healthy wildlife populations.

The Service has determined that allowing dog training for the full State seasons in the New Hampshire and Vermont sections of the refuge is not compatible with our conservation mission. The Service allows dog training in August and September at Conte NFWR, while each State also allows the activity to occur in June and July. We cannot allow the activity in June and July because migratory landbirds nest on the refuge during those months. Disturbance to these species during this vulnerable period may decrease nest and brooding success (Gutzwiller et al. 1998; Thompson, B. 2015). Nesting success is critical to maintain the population of game and non-game species. Many non-game species of migratory birds are declining across their range. Canada warbler, rusty blackbird, wood thrush, and veery, for example, have been listed as species in greatest need of conservation in the Birds of Conservation Concern 2021 by the Service's Migratory Bird Program. Canada warbler, rusty blackbird, and wood thrush are also high priority bird species of greatest conservation need as identified in Vermont's 2005 and 2015 Wildlife Action Plans (Vermont Fish and Wildlife Department (VFWD) State Wildlife Action Plan 2015) and New Hampshire's Fish and Game 2015 Wildlife Action Plan (New Hampshire Fish and Game Department (NHFGD) 2015). These species breed within forested habitats of the portions of Conte NFWR in New Hampshire and Vermont. Veeries and Canada warblers nest on or near the ground and their eggs and hatchlings are vulnerable to disturbance, predation, and trampling. While hunting is a priority public use of the Refuge System under the Improvement Act, training of dogs is not. Hunting is the legal authorization to take or harvest a game species. There is no legal authorization to take any species for the purpose of dog training on the refuge. We recognize that dog training is a component of the hunting experience, and with stipulations to shorten the training season, it is currently found compatible. Migratory landbirds are a trust resource, and based on our professional opinion and available science, dog training as a compatible use during the breeding season is not supported by science.

At this time, the Service will not require individuals to obtain a refuge-specific permit for hunting with dogs or training dogs on the refuge. Hunting with and training of dogs is allowed on the refuge consistent with State regulations when found compatible with refuge purposes, as outlined in the hunt plan. The information collected from the previously required permit satisfied the refuge's need to engage with the user group. The Service will continue to monitor population trends of endangered and threatened species, and migratory birds, at the refuge. If there is evidence that trust resource populations are negatively impacted by either the training of hunting dogs or the use of hunting dogs, then we may revisit impacts associated with the use of dogs and take action to limit impacts. As with any refuge-specific regulations, we reserve the right to revisit the issue in a future annual rulemaking should anything change with respect to conditions on the refuge, the findings of the best available science on this topic, or our empirical experience with dog use on the refuge.

We did not make any changes to the rule as a result of these comments.

Changes From the Proposed Rule

As discussed above, under Summary of Comments and Responses, based on comments we received on the June 23, 2023, proposed rule and NEPA documents for individual refuges, we made no changes in this final rule.

Effective Date

We are making this rule effective upon the date of its filing at the Office of the Federal Register (see **DATES**, above), with the exception of the requirements to use non-lead ammunition and fishing tackle on Great Thicket, Rachel Carson, Blackwater, Eastern Neck, Patuxent Research Refuge, Erie, Chincoteague, and Wallops Island NWRs at 50 CFR 32.38, 32.39, 32.57, and 32.65(b)(1)(vi), (b)(2)(i), (b)(3)(i), (b)(4)(vi), (n)(1)(vi), (n)(2)(i), and (n)(3)(i), respectively, which will take effect on September 1, 2026. We provided a 60-day public comment period for the June 23, 2023, proposed rule (88 FR 41058). We have determined that any further delay in implementing these station-specific hunting and sport fishing regulations would not be in the public interest, in that a delay would hinder the effective planning and administration of refuges' hunting and sport fishing programs. This rule does not impact the public generally in terms of requiring lead time for compliance. Rather, it relieves restrictions in that it allows activities on refuges and hatcheries that we would otherwise prohibit. Therefore, we find good cause under 5 U.S.C. 553(d)(3) to make this rule effective upon the date of its filing at the Office of the Federal Register.

Amendments to Existing Regulations

Updates to Hunting and Fishing Opportunities on NWRs

This document codifies in the Code of Federal Regulations all the Service's hunting and/or sport fishing regulations that we are updating since the last time we published a rule amending these regulations (87 FR 57108; September 16, 2022) and that are applicable at Refuge System units previously opened to hunting and/or sport fishing. We adopt these changes to better inform the general public of the regulations at each station, to increase understanding and compliance with these regulations, and to make enforcement of these regulations more efficient. In addition to finding these regulations in 50 CFR part 32, visitors to our stations may find them reiterated in literature distributed by each station or posted on signs.

TABLE 1—CHANGES FOR 2023–2024 HUNTING/SPORT FISHING SEASON

Station	State	Migratory bird hunting	Upland game hunting	Big game hunting	Sport fishing
Cahaba River NWR	Alabama	Closed	Already Open	E	Already Open.
Everglades Headwaters NWR	Florida	E	E	E	Closed.
Minnesota Valley NWR	Minnesota	E	E	E	Already Open.

Key:
E = Expansion (Station is already open to the activity: the rule will add new lands/waters, modify areas open to hunting or fishing, extend season dates, add a targeted hunt, modify season dates, modify hunting hours, etc.)

The changes for the 2023–2024 hunting/fishing season noted in the table above are each based on a complete administrative record which, among other detailed documentation, also includes a hunt plan, a compatibility determination (for refuges), and the appropriate NEPA analysis, all of which were the subject of a public review and comment process. These documents are available upon request.

The Service remains concerned that lead is an important issue, and we will continue to appropriately evaluate and regulate the use of lead ammunition and tackle on Service lands and waters. The Service has initiated stakeholder engagement to implement a deliberate, open, and transparent process of evaluating the future of lead use on Service lands and waters, working with our State partners, and seeking input and recommendations from the Hunting and Wildlife Conservation Council, other stakeholders, and the public. The best available science, analyzed as part of this rulemaking, indicates that lead ammunition and tackle have negative impacts on both wildlife and human health. Based on the best available science and sound professional judgment, where appropriate, the Service may propose to require the use of non-lead ammunition and tackle on Service lands and waters, as we have done in certain cases already. While the Service continues to evaluate the future of lead use in hunting and fishing on Service lands and waters, we will continue to work with stakeholders and the public to evaluate lead use through the annual rulemaking process. In the interim, we will not allow for any increase in lead use on Service lands and waters. Therefore, this rule does not include any opportunities increasing or authorizing the new use of lead. Minnesota Valley NWR already requires non-lead ammunition for the migratory bird and upland game hunting opportunities being expanded, and the refuge's expansion of the big game hunt involves only archery deer hunting, which does not involve lead ammunition, as part of a special hunt program. The Cahaba River NWR is expanding archery deer hunting, which does not involve lead ammunition. Everglades Headwaters NWR is expanding existing migratory game bird, upland game, and big game hunting to new acres that will require the use of non-lead ammunition immediately in the fall 2023 season; the rule will require non-lead ammunition only within the newly expanded acres for hunting on the refuge. This restriction on the use of lead ammunition was developed in coordination with the State of Florida's Fish and Wildlife Conservation Commission. As we noted in our September 16, 2022, final rule (87 FR 57108), in this rule, Blackwater, Chincoteague, Eastern Neck, Erie, Great Thicket, Patuxent Research Refuge, Rachel Carson, and Wallops Island NWRs will require non-lead equipment, effective on September 1, 2026. Specifically, all eight refuges will require the use of non-lead ammunition by fall 2026, and seven of the eight, excepting Chincoteague, will require the use of non-lead tackle by fall 2026 as well.

Fish Advisory

For health reasons, anglers should review and follow State-issued consumption advisories before enjoying recreational sport fishing opportunities on Service-managed waters. You can find information about current fish-consumption advisories on the internet at *https://www.epa.gov/fish-tech.*

Required Determinations

Regulatory Planning and Review—Executive Orders 12866, 13563, and 14094

Executive Order 14094 reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this final rule in a manner consistent with these requirements.

E.O. 12866, as reaffirmed by E.O. 13563 and E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

This rule expands hunting on three NWRs. As a result, visitor use for wildlife-dependent recreation on these stations will change. If the stations establishing new programs were a pure addition to the current supply of those activities, it would mean an estimated maximum increase of 586 user days (one person per day participating in a recreational opportunity; see table 2, below). Because the participation trend is flat in these activities, this increase in supply will most likely be offset by other sites losing participants. Therefore, this is likely to be a substitute site for the activity and not necessarily an increase in participation rates for the activity.

TABLE 2—ESTIMATED MAXIMUM CHANGE IN RECREATION OPPORTUNITIES IN 2023–2024

[2022 Dollars in thousands]

Station	Additional hunting days	Additional fishing days	Additional expenditures (in thousands)
Cahaba River NWR	120	.....	$4
Everglades Headwaters NWR	225	.....	9
Minnesota Valley NWR	241	.....	9
Total	586	.....	22

To the extent visitors spend time and money in the area of the station that they would not have spent there anyway, they contribute new income to the regional economy and benefit local businesses. Due to the unavailability of site-specific expenditure data, we use the national estimates from the 2016 National Survey of Fishing, Hunting, and Wildlife Associated Recreation to identify expenditures for food and lodging, transportation, and other incidental expenses. Using the average expenditures for these categories with the maximum expected additional participation of the Refuge System yields approximately $22,000 in recreation-related expenditures (see table 2, above). By having ripple effects throughout the economy, these direct expenditures are only part of the economic impact of these recreational activities. Using a national impact multiplier for hunting activities (2.51) derived from the report ''Hunting in America: An Economic Force for Conservation'' and for fishing activities (2.51) derived from the report ''Sportfishing in America'' yields a total maximum economic impact of approximately $56,000 (2022 dollars) (Southwick Associates, Inc., 2018).

Since we know that most of the fishing and hunting occurs within 100 miles of a participant's residence, then it is unlikely that most of this spending will be ''new'' money coming into a local economy; therefore, this spending will be offset with a decrease in some other sector of the local economy. The net gain to the local economies will be no more than $56,000 and likely less. Since 80 percent of the participants travel less than 100 miles to engage in hunting and fishing activities, their spending patterns will not add new money into the local economy and, therefore, the real impact will be on the order of about $22,000 annually.

Small businesses within the retail trade industry (such as hotels, gas stations, taxidermy shops, bait-and-tackle shops, and similar businesses) may be affected by some increased or decreased station visitation. A large percentage of these retail trade establishments in the local communities around NWRs qualify as small businesses (see table 3, below). We expect that the incremental recreational changes will be scattered, and so we do not expect that the rule will have a significant economic effect on a substantial number of small entities in any region or nationally. As noted previously, we expect at most $22,000 to be spent in total in the refuges' local economies. The maximum increase will be less than one-tenth of 1 percent for local retail trade spending (see table 3, below). Table 3 does not include entries for those NWRs for which we project no changes in recreation opportunities in 2023–2024; see table 2, above.

TABLE 3—COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL STATION VISITATION FOR 2023–2024

[Thousands, 2022 dollars]

Station/county(ies)	Retail trade in 2017 [1]	Estimated maximum addition from new activities	Addition as % of total	Establishments in 2017 [1]	Establishments with fewer than 10 employees in 2017
Cahaba River:					
Bibb, AL	$143,008	$5	<0.1	52	39
Everglades Headwaters:					
Hardee, FL	223,259	3	<0.1	75	63
Highlands, FL	1,505,788	3	<0.1	342	246
Polk, FL	9,949,483	3	<0.1	1,814	1,276
Minnesota Valley:					
Carver, MN	1,116,550	5	<0.1	220	142

[1] U.S. Census Bureau.

With the small change in overall spending anticipated from this rule, it is unlikely that a substantial number of small entities will have more than a small impact from the spending change near the affected stations. Therefore, we certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A regulatory flexibility analysis is not required. Accordingly, a small entity compliance guide is not required.

Congressional Review Act

The rule is not a major rule under 5 U.S.C. 804(2), the Congressional Review Act. We anticipate no significant employment or small business effects. This rule:

a. Will not have an annual effect on the economy of $100 million or more. The minimal impact will be scattered across the country and will most likely not be significant in any local area.

b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This rule will have only a slight effect on the costs of hunting opportunities for Americans. If the substitute sites are farther from the participants' residences, then an increase in travel costs will occur. The Service does not have information to quantify this change in travel cost but assumes that, since most people travel less than 100 miles to hunt, the increased travel cost will be small. We do not expect this rule to affect the supply or demand for hunting opportunities in the United States, and, therefore, it should not affect prices for hunting equipment and supplies, or the retailers that sell equipment.

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule represents only a small proportion of recreational spending at NWRs. Therefore, this rule will have no measurable economic effect on the wildlife-dependent industry, which has annual sales of equipment and travel expenditures of $72 billion nationwide.

Unfunded Mandates Reform Act

Since this rule will apply to public use of federally owned and managed refuges, it will not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule will not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with E.O. 12630, this rule will not have significant takings implications. This rule will affect only visitors at NWRs and describes what they can do while they are on a Service station.

Federalism (E.O. 13132)

As discussed under *Regulatory Planning and Review* and *Unfunded Mandates Reform Act,* above, this rule will not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement under E.O. 13132. In preparing this rule, we worked with State governments.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Department of the Interior has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the order.

Energy Supply, Distribution or Use (E.O. 13211)

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, or use. E.O. 13211 requires agencies to prepare statements of energy effects when undertaking certain actions. Because this rule will expand hunting at three NWRs, it is not a significant regulatory action under E.O. 12866, and we do not expect it to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no statement of energy effects is required.

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

In accordance with E.O. 13175, we have evaluated possible effects on federally recognized Indian Tribes and have determined that there are no effects. We coordinate recreational use on NWRs and National Fish Hatcheries with Tribal governments having adjoining or overlapping jurisdiction before we propose the regulations.

Paperwork Reduction Act (PRA)

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB previously approved the information collection requirements associated with application and reporting requirements associated with hunting and sport fishing and assigned OMB Control Number 1018–0140 (expires 09/30/2025). 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.

Endangered Species Act Section 7 Consultation

We comply with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), when developing comprehensive conservation plans and step-down management plans—which includes hunting and/or fishing plans—for public use of refuges and hatcheries, and prior to implementing any new or revised public recreation program on a station as identified in 50 CFR 26.32. We complied with section 7 for each of the stations affected by this rulemaking.

National Environmental Policy Act

We analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4332(C)), 43 CFR part 46, and 516 Departmental Manual (DM) 8.

A categorical exclusion from NEPA documentation applies to publication of amendments to station-specific hunting and fishing regulations because they are technical and procedural in nature, and the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis (43 CFR 46.210 and 516 DM 8). Concerning the actions that are the subject of this rulemaking, we have complied with NEPA at the project level when developing each package. This is consistent with the Department of the Interior instructions for compliance with NEPA where actions are covered sufficiently by an earlier environmental document (43 CFR 46.120).

Prior to the addition of a refuge or hatchery to the list of areas open to hunting and fishing in 50 CFR parts 32 and 71, we develop hunting and fishing plans for the affected stations. We incorporate these station hunting and fishing activities in the station comprehensive conservation plan and/or other step-down management plans, pursuant to our refuge planning guidance in 602 Fish and Wildlife Service Manual (FW) 1, 3, and 4. We prepare these comprehensive conservation plans and step-down plans in compliance with section 102(2)(C) of NEPA, the Council on Environmental Quality's regulations for implementing NEPA in 40 CFR parts 1500 through 1508, and the Department of Interior's NEPA regulations at 43 CFR part 46. We invite the affected public to participate in the review, development, and implementation of these plans. Copies of all plans and NEPA compliance are available from the stations at the addresses provided below.

Available Information for Specific Stations

Individual refuge and hatchery headquarters have information about public use programs and conditions that apply to their specific programs and maps of their respective areas. To find out how to contact a specific refuge or hatchery, contact the appropriate Service office for the States and Territories listed below:

Hawaii, Idaho, Oregon, and Washington. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 NE 11th Avenue, Portland, OR 97232–4181; Telephone (503) 231–6203.

Arizona, New Mexico, Oklahoma, and Texas. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, P.O. Box 1306, 500 Gold Avenue SW, Albuquerque, NM 87103; Telephone (505) 248–6635.

Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458; Telephone (612) 713–5476.

Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the Virgin Islands. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, GA 30345; Telephone (404) 679–7356.

Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589; Telephone (413) 253–8307.

Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 134 Union Blvd., Lakewood, CO 80228; Telephone (303) 236–4377.

Alaska. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1011 E Tudor Rd., Anchorage, AK 99503; Telephone (907) 786–3545.

California and Nevada. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825; Telephone (916) 767–9241.

Primary Author

Kate Harrigan, Division of Natural Resources and Conservation Planning, National Wildlife Refuge System, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Regulation Promulgation

For the reasons described in the preamble, we amend title 50, chapter I, subchapter C of the Code of Federal Regulations as set forth below:

PART 32—HUNTING AND FISHING

■ 1. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd–668ee, and 715i; Pub. L. 115–20, 131 Stat. 86.

■ 2. Amend § 32.24 by revising paragraphs (s)(1)(iv) and (vi) to read as follows:

§ 32.24 California.

* * * * *

(s) * * *

(1) * * *

(iv)We restrict hunters in the spaced zone area of the East Bear Creek Unit and West Bear Creek Unit to their assigned zone except when they are traveling to and from the parking area, retrieving downed birds, or pursuing crippled birds.

* * * * *

(vi) We require State-issued Type A area permits for accessing the Freitas Unit on Wednesdays, Saturdays, and Sundays.

* * * * *

■ 3. Amend § 32.28 by revising paragraphs (e)(2) and (3) to read as follows:

§ 32.28 Florida.

* * * * *

(e) * * *

(2) *Upland game hunting.* We allow upland game hunting and the incidental take of nonnative wildlife as defined by the State on designated areas of the refuge in accordance with State regulations and applicable State Wildlife Management Area regulations and the following condition: We require the use of non-lead ammunition when hunting upland game and the incidental take of nonnative wildlife on the Corrigan Ranch/Okeechobee Unit.

(3) *Big game hunting.* We allow big game hunting and the incidental take of nonnative wildlife as defined by the State on designated areas of the refuge in accordance with State regulations and applicable State Wildlife Management Area regulations and the following condition: We require the use of non-lead ammunition when hunting big game and the incidental take of nonnative wildlife on the Corrigan Ranch/Okeechobee Unit.

* * * * *

■ 4. Amend § 32.35 by revising paragraph (a)(1)(v) to read as follows:

§ 32.35 Kansas.

* * * * *

(a) * * *

(1) * * *

(v) We close the Neosho River and refuge lands north of the Neosho River to all hunting from November 1 through March 1.

* * * * *

■ 5. Effective September 1, 2026, amend § 32.38 by:

■ a. Adding paragraph (b)(1)(v);

■ b. Revising paragraphs (b)(2)(i) and (b)(3)(i);

■ c. Adding paragraph (f)(1)(v); and

■ d. Revising paragraphs (f)(2)(i), (f)(3)(i), and (f)(4)(ii).

The additions and revisions read as follows:

§ 32.38 Maine.

* * * * *

(b) * * *

(1) * * *

(v) You may only use or possess approved non-lead shot shells, ammunition, and tackle while in the field (see § 32.2(k)).

(2) * * *

(i) The conditions set forth at paragraphs (b)(1)(i) through (iii) and (v) of this section apply.

* * * * *

(3) * * *

(i) The conditions set forth at paragraphs (b)(1)(i) through (iii) and (v) of this section apply.

* * * * *

(f) * * *

(1) * * *

(v) You may only use or possess approved non-lead shot shells, ammunition, and tackle while in the field (see § 32.2(k)).

(2) * * *

(i) The conditions set forth at paragraphs (f)(1)(i), (iii), and (v) of this section apply.

* * * * *

(3) * * *

(i) The conditions as set forth at paragraphs (f)(1)(i), (iv), and (v) of this section apply.

* * * * *

(4) * * *

(ii) The condition set forth at paragraph (f)(1)(v) of this section applies.

* * * * *

■ 6. Effective September 1, 2026, amend § 32.39 by:

■ a. Adding paragraph (a)(1)(iv);

■ b. Revising paragraph (a)(2)(i);

■ c. Adding paragraphs (a)(3)(vi), (a)(4)(iii), and (b)(2)(iv);

■ d. Revising paragraph (b)(3)(i) introductory text;

■ e. Adding paragraphs (b)(3)(iv), (b)(4)(iii), and (c)(1)(v); and

■ f. Revising paragraphs (c)(2), (c)(3)(i), and (c)(4).

The additions and revisions read as follows:

§ 32.39 Maryland.

* * * * *

(a) * * *

(1) * * *

(iv) You may only use or possess approved non-lead shot shells, ammunition, and tackle while in the field (see § 32.2(k)).

(2) * * *

(i) The conditions set forth at paragraphs (a)(1)(iv) and (a)(3)(i) through (v) of this section apply.

* * * * *

(3) * * *

(vi) The condition set forth at paragraph (a)(1)(iv) of this section applies.

(4) * * *

(iii) The condition set forth at paragraph (a)(1)(iv) of this section applies.

(b) * * *

(2) * * *

(iv) You may only use or possess approved non-lead shot shells, ammunition, and tackle while in the field (see § 32.2(k)).

(3) * * *

(i) The general hunt regulations for this paragraph (b)(3) are:

* * * * *

(iv) The condition set forth at paragraph (b)(2)(iv) of this section applies.

(4) * * *

(iii) The condition set forth at paragraph (b)(2)(iv) of this section applies.

(c) * * *

(1) * * *

(v) You may only use or possess approved non-lead shot shells, ammunition, and tackle while in the field (see § 32.2(k)).

(2) *Upland game hunting.* We allow hunting of gray squirrel, eastern cottontail rabbit, and woodchuck on designated areas of the refuge subject to the following condition: The conditions set forth at paragraphs (c)(1)(i) through (iii) and (v) of this section apply.

(3) * * *

(i) The conditions set forth at paragraphs (c)(1)(i), (ii), and (v) of this section apply.

* * * * *

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following condition: The condition set forth at paragraph (c)(1)(v) of this section applies.

■ 7. Amend § 32.40 by:

■ a. Adding paragraph (a)(4)(iii); and

■ b. Revising paragraphs (b)(4) and (f)(4).

The addition and revisions read as follows:

§ 32.40 Massachusetts.

* * * * *

(a) * * *

(4) * * *

(iii) We allow fishing from legal sunrise to legal sunset.

(b) * * *

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge from legal sunrise to legal sunset.

* * * * *

(f) * * *

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge from legal sunrise to legal sunset.

* * * * *

■ 8. Amend § 32.47 by:

■ a. Revising paragraphs (d)(1)(i) and (iii);

■ b. Adding paragraphs (d)(1)(iv) and (v); and

■ c. Revising paragraph (d)(2)(iii).

The revisions and addition read as follows:

§ 32.47 Nevada.

* * * * *

(d) * * *

(1) * * *

(i) We allow hunting on designated days. We prohibit any migratory game bird hunting after January 31.

* * * * *

(iii) From October 1 to February 1, you may only be in possession of or use 25 or fewer shot shells per hunt day.

(iv) We only allow hunters to use watercraft to travel to and from their hunting location for each day's hunt. Watercraft must be completely immobilized while hunting, except to retrieve downed or crippled birds.

(v) We prohibit shooting 150 feet (45 meters) from the center line of roads

(including access roads and two tracks), parking areas, levees, or into or from safety zones.

(2) * * *

(iii) The conditions set forth at paragraphs (d)(1)(iii) and (iv) of this section apply.

* * * * *

■ 9. Amend § 32.48 by revising paragraph (b) to read as follows:

§ 32.48 New Hampshire.

* * * * *

(b) *Silvio O. Conte National Fish and Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, coot, Wilson's snipe, and American woodcock on designated areas of the refuge subject to the following condition: We allow the use of dogs consistent with State regulations, except dog training is only allowed from August 1 through the last Saturday in September during daylight hours.

(2) *Upland game hunting.* We allow hunting of coyote, fox, raccoon, woodchuck, red squirrel, eastern gray squirrel, porcupine, skunk, crow, snowshoe hare, muskrat, opossum, fisher, mink, weasel, ring-necked pheasant, and ruffed grouse on designated areas of the refuge subject to the following condition: We allow the use of dogs consistent with State regulations, except dog training is only allowed from August 1 through the last Saturday in September during daylight hours.

(3) *Big game hunting.* We allow hunting of white-tailed deer, moose, black bear, and wild turkey on designated areas of the refuge subject to the following conditions:

(i) We allow the use of dogs consistent with State regulations, except dog training is only allowed from August 1 through the last Saturday in September during daylight hours.

(ii) We allow tree stands and blinds that are clearly marked with the owner's State hunting license number.

(iii) You must remove your tree stand(s) and blind(s) no later than 72 hours after the close of the season (see § 27.93 of this chapter).

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

* * * * *

■ 10. Amend § 32.56 by revising paragraph (l)(2) to read as follows:

§ 32.56 Oregon.

* * * * *

(l) * * *

(2) *Upland game hunting.* We allow hunting of upland game birds and turkey on designated areas of the refuge subject to the following condition: The condition set forth at paragraph (l)(1)(i) of this section applies.

* * * * *

■ 11. Effective September 1, 2026, amend § 32.57 by:

■ a. Adding paragraph (b)(1)(v);

■ b. Revising paragraphs (b)(2)(iii) and (b)(3)(ii); and

■ c. Adding paragraph (b)(4)(vi).

The additions and revisions read as follows:

§ 32.57 Pennsylvania.

* * * * *

(b) * * *

(1) * * *

(v) You may only use or possess approved non-lead shot shells, ammunition, and tackle while in the field (see § 32.2(k)).

(2) * * *

(iii) The conditions set forth at paragraphs (b)(1)(iv) and (v) of this section apply.

* * * * *

(3) * * *

(ii) The conditions set forth at paragraphs (b)(1)(iv) and (v) of this section apply.

(4) * * *

(vi) The condition set forth at paragraph (b)(1)(v) of this section applies.

* * * * *

§ 32.62 [Amended]

■ 12. Amend § 32.62 by:

■ a. Removing paragraph (h)(3)(x); and

■ b. Redesignating paragraphs (h)(3)(xi) through (xiii) as paragraphs (h)(3)(x) through (xii), respectively.

■ 13. Amend § 32.64 by:

■ a. Adding paragraph (a)(4)(v); and

■ b. Revising paragraph (b).

The addition and revision read as follows:

§ 32.64 Vermont.

* * * * *

(a) * * *

(4) * * *

(v) We allow fishing from legal sunrise to legal sunset.

(b) *Silvio O. Conte National Fish and Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, coot, crow, snipe, and American woodcock on designated areas of the refuge subject to the following conditions:

(i) We allow disabled hunters to hunt from a vehicle that is at least 10 feet from the traveled portion of the refuge road if the hunter possesses a State-issued disabled hunting license and a Special Use Permit (FWS Form 3–1383–G) issued by the refuge manager.

(ii) We allow the use of dogs consistent with State regulations, except dog training is only allowed from August 1 through the last Saturday in September during daylight hours. We prohibit dog training on the Putney Mountain Unit.

(iii) We prohibit shooting from, over, or within 25 feet of the traveled portion of any road that is accessible to motor vehicles.

(2) *Upland game hunting.* We allow hunting of coyote, fox, raccoon, bobcat, woodchuck, red squirrel, eastern gray squirrel, porcupine, skunk, snowshoe hare, eastern cottontail, muskrat, opossum, weasel, pheasant, and ruffed grouse on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (b)(1)(ii) and (iii) of this section apply.

(ii) At the Putney Mountain Unit, we allow the use of dogs only for hunting ruffed grouse, fall turkey, squirrel, and woodcock.

(iii) We require hunters hunting at night to possess a Special Use Permit (FWS Form 3–1383–G) issued by the refuge manager.

(3) *Big game hunting.* We allow hunting of white-tailed deer, moose, black bear, and wild turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (b)(1)(ii) and (iii) of this section apply.

(ii) You may use portable tree stands and/or blinds. You must clearly label your tree stand(s) and/or blind(s) with your hunting license number. You must remove your tree stand(s) and/or blind(s) no later than 72 hours after the close of the season (see § 27.93 of this chapter).

(iii) You may retrieve moose at the Nulhegan Basin Division with the use of a commercial moose hauler, if the hauler possesses a Special Use Permit (FWS Form 3–1383–C) issued by the refuge manager.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge consistent with State regulations.

■ 14. Amend § 32.65 by:

■ a. Adding paragraphs (b)(2)(vii) and (viii) and (c)(2)(iii); and

■ b. Revising paragraph (c)(3)(i).

The additions and revision read as follows:

§ 32.65 Virginia.

* * * * *

(b) * * *

(2) * * *

(vii) Hunting is allowed only during the regular State deer season.

(viii) We prohibit hunting on Sundays.

* * * * *

(c) * * *

(2) * * *

(iii) We prohibit hunting on Sundays.

(3) * * *

(i) The conditions set forth at paragraphs (c)(1)(i), (ii), (iv), and (v) and (c)(2)(iii) of this section apply.

* * * * *

■ 15. Effective September 1, 2026, further amend § 32.65 by:

■ a. Adding paragraph (b)(1)(vi);

■ b. Revising paragraphs (b)(2)(i) and (b)(3)(i);

■ c. Adding paragraphs (b)(4)(vi) and (n)(1)(vi); and

■ d. Revising paragraphs (n)(2)(i) and (n)(3)(i).

The additions and revisions read as follows:

§ 32.65 Virginia.

* * * * *

(b) * * *

(1) * * *

(vi) You may only use or possess approved non-lead shot shells and ammunition while in the field (see § 32.2(k)).

(2) * * *

(i) The conditions set forth at paragraphs (b)(1)(i) and (vi) of this section apply. All occupants of a vehicle or hunt party must possess a signed refuge hunt brochure and be actively engaged in hunting unless aiding a disabled person who possesses a valid State disabled hunting license.

* * * * *

(3) * * *

(i) The conditions set forth at paragraphs (b)(1)(vi) and (b)(2)(i), (ii), and (v) through (viii) of this section apply.

* * * * *

(4) * * *

(vi) The condition set forth at paragraph (b)(1)(vi) of this section applies.

* * * * *

(n) * * *

(1) * * *

(vi) You may only use or possess approved non-lead shot shells, ammunition, and tackle while in the field (see § 32.2(k)).

(2) * * *

(i) The conditions set forth in paragraphs (n)(1)(i), (iii), and (vi) of this section apply.

* * * * *

(3) * * *

(i) The conditions set forth at paragraphs (n)(1)(i), (ii), and (vi) and (n)(2)(iv) of this section apply.

* * * * *

■ 16. Amend § 32.66 by revising paragraph (b)(4)(i) to read as follows:

§ 32.66 Washington.

* * * * *

(b) * * *

(4) * * *

(i) On waters open to fishing, we allow fishing only from the start of the State season to September 30, except that we allow fishing year-round on Falcon, Heron, Goldeneye, Corral, Blythe, Chukar, and Scaup Lakes.

* * * * *

Shannon Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2023–23847 Filed 10–27–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120404257–3325–02; RTID 0648–XD427]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2023 Commercial Hook-and-Line Closure for Golden Tilefish in the South Atlantic

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure for the commercial hook-and-line component of golden tilefish in the South Atlantic exclusive economic zone (EEZ). NMFS projects that commercial landings of golden tilefish harvested by hook-and-line are projected to reach the commercial component quota in the 2023 fishing year. Accordingly, NMFS closes the commercial hook-and-line component for golden tilefish in the South Atlantic EEZ for the remainder of the 2023 fishing year to protect the golden tilefish resource.

DATES: This temporary rule is effective from 12:01 a.m. eastern time on October 31, 2023, through December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *mary.vara@noaa.gov*.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes golden tilefish and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The South Atlantic Fishery Management Council and NMFS prepared the FMP, and the FMP is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All weights in this temporary rule are given in gutted weight.

The commercial sector for golden tilefish has two components, each with its own quota: The hook-and-line and longline components (50 CFR 622.190(a)(2)). The commercial annual catch limit (ACL) for golden tilefish is allocated 25 percent to the hook-and-line component and 75 percent to the longline component. The total commercial ACL (equivalent to the total commercial quota) for golden tilefish is 331,740 lb (150,475 kg). The commercial ACL (equivalent to the commercial quota) for the hook-and-line component is 82,935 lb (37,619 kg).

Under 50 CFR 622.193(a)(1)(i), NMFS is required to close the commercial hook-and-line component for golden tilefish when its commercial ACL has been reached, or is projected to be reached, through a notification filed with the Office of the Federal Register. NMFS projects that commercial landings of South Atlantic golden tilefish by the hook-and-line component will reach the ACL by October 31, 2023. Accordingly, the commercial hook-and-line component of South Atlantic golden tilefish is closed on October 31, 2023.

For the current fishing year, NMFS has also closed the commercial longline component on April 7, 2023, and the recreational sector on July 17, 2023, for golden tilefish through 2023 (88 FR 20079, April 5, 2023; 88 FR 45369, July 17, 2023). Therefore, because the commercial longline component and recreational sector are already closed, and NMFS is closing the commercial hook-and-line component through this temporary rule, all harvest and possession of South Atlantic golden tilefish in or from the EEZ is prohibited from the effective date of this temporary rule through the end of 2023.

The operator of a vessel issued a valid Federal commercial vessel permit for South Atlantic snapper-grouper with golden tilefish on board harvested by hook-and-line must have landed and bartered, traded, or sold such golden tilefish prior to 12:01 a.m. eastern time on October 31, 2023. During the closure, the sale or purchase of golden tilefish harvested from the EEZ is prohibited. The prohibition on sale or purchase does not apply to the sale or purchase

of golden tilefish that were harvested by hook-and-line, landed ashore, and sold before 12:01 a.m. eastern time on October 31, 2023, and were held in cold storage by a dealer or processor. For a person on board a vessel for which a Federal commercial or charter vessel/headboat permit for the South Atlantic snapper-grouper fishery has been issued, the recreational bag and possession limits and the sale and purchase prohibitions during the commercial closure for golden tilefish apply regardless of whether the fish are harvested in state or Federal waters, as specified in 50 CFR 622.190(c)(1)(ii).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 622.193(a)(1), which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment are unnecessary and contrary to the public interest. Such procedures are unnecessary because the regulations associated with the commercial closure of the golden tilefish hook-and-line component have already been subject to notice and public comment, and all that remains is to notify the public of the closure. Such procedures are also contrary to the public interest because of the need to immediately implement the closure to protect the golden tilefish resource and minimize the risk of exceeding the commercial ACL. Prior notice and opportunity for public comment would require time, which would allow for additional commercial landings, and could therefore result in exceedance of the sector ACL.

For the reasons stated earlier, the Assistant Administrator also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: October 24, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–23835 Filed 10–25–23; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 230224–0053; RTID 0648–XD297]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Using Pot Gear in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels using pot gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2023 total allowable catch (TAC) of Pacific cod by vessels using pot gear in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), October, 26, 2023, through 2400 hours, A.l.t., December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Abby Jahn, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR parts 600 and 679.

The 2023 Pacific cod TAC apportioned to vessels using pot gear in the Central Regulatory Area of the GOA is 3,062 metric tons (mt) as established by the final 2023 and 2024 harvest specifications for groundfish in the GOA (88 FR 13238, March 2, 2023).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the 2023 Pacific cod TAC apportioned to vessels using pot gear in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,052 mt and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels using pot gear in the Central Regulatory Area of the GOA.

While this closure is effective, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

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

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion, and would delay the closure of Pacific cod by vessels using pot gear in the Central Regulatory Area of the GOA. NMFS was unable to publish notice providing time for public comment because the most recent, relevant data only became available as of October 24, 2023.

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

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

Dated: October 25, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–23882 Filed 10–25–23; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 208
Monday, October 30, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2022–0188]

RIN 3150–AK89

List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM 100 Cask System, Certificate of Compliance No. 1014, Renewed Amendment No. 17

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its spent fuel regulations by revising the Holtec International HI–STORM 100 Cask System listing within the ''List of approved spent fuel storage casks'' to include Renewed Amendment No. 17 to Certificate of Compliance No. 1014. Because this amendment is subsequent to the renewal of the HI–STORM 100 Cask System Certificate of Compliance No. 1014 and, therefore, subject to the Aging Management Program requirements of the renewed certificate, NRC is referring to it as ''Renewed Amendment No. 17.'' Renewed Amendment No. 17 updates the HI–STORM 100 Cask System description in the certificate of compliance to indicate that only the portions of the components that contact the pool water need to be made of stainless steel or aluminum. This amendment also includes minor editorial and formatting changes to the technical specifications that do not change the substantive technical information of the certificate of compliance.

DATES: Submit comments by November 29, 2023. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit your comments, identified by Docket ID NRC–2022–0188, at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Kristina Banovac, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–7116, email: *Kristina.Banovac@nrc.gov;* and Irene Wu, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–1951, email: *Irene.Wu@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

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II. Rulemaking Procedure
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I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0188 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket NRC–2022–0188. Address questions about NRC dockets to Dawn Forder, telephone: 301–415–3407, email: *Dawn.Forder@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays.

B. Submitting Comments

Please include Docket ID NRC–2022–0188 in your comment submission. The NRC requests that you submit comments through the Federal rulemaking website at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Rulemaking Procedure

Because the NRC considers this action to be non-controversial, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. The direct final rule will become effective on January 16, 2024. However, if the NRC

receives any significant adverse comment by November 29, 2023, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments in a subsequent final rule. In general, absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule.

For a more detailed discussion of the proposed rule changes and associated analyses, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

III. Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended, states that ''[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the Nuclear Waste Policy Act states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule that added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on May 1, 2000 (65 FR 25241), that approved the HI–STORM 100 Cask System design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance No. 1014.

IV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885). The NRC requests comment on the proposed rule with respect to clarity and effectiveness of the language used.

V. Availability of Documents

The documents identified in the following table are available to interested persons as indicated.

Document	ADAMS accession No./ **Federal Register** citation
Holtec International, Submittal of Application for Amendment 17 to HI–STORM 100 Cask System Certificate of Compliance No. 1014, dated July 30, 2021.	ML21211A603 (package).
User Need Memorandum for Amendment No. 17 to HI–STORM 100 Cask System, dated August 23, 2022	ML22175A087.
Corrected User Need Memorandum for Amendment No. 17 to HI–STORM 100 Cask System, dated December 19, 2022.	ML22313A038.
Proposed Certificate of Compliance No. 1014, Amendment No. 17	ML22175A085.
Preliminary Safety Evaluation Report for the HI–STORM 100 Cask System: Certificate of Compliance No. 1014, Amendment No. 17.	ML22175A086.
Proposed Certificate of Compliance No. 1014 Appendix A: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 17.	ML22175A079.
Proposed Certificate of Compliance No. 1014 Appendix B: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 17.	ML22175A080.
Proposed Certificate of Compliance No. 1014 Appendix C: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 17.	ML22175A081.
Proposed Certificate of Compliance No. 1014 Appendix D: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 17.	ML22175A082.
Proposed Certificate of Compliance No. 1014 Appendix A–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 17.	ML22175A083.
Proposed Certificate of Compliance No. 1014 Appendix B–100U: Technical Specifications for the HI–STORM 100 Cask System Amendment No. 17.	ML22175A084.
Final Rule, ''Storage of Spent Fuel in NRC-Approved Storage Casks at Power Reactor Sites,'' published July 18, 1990.	55 FR 29181.
Final Rule, ''List of Approved Spent Fuel Storage Casks: Holtec HI–STORM 100 Addition,'' published May 1, 2000	65 FR 25241.
Revision to Policy Statement, ''Agreement State Program Policy Statement; Correction,'' published October 18, 2017.	82 FR 48535.
Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998	63 FR 31885.

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2022–0188. In addition, the Federal rulemaking website allows members of the public to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) navigate to the docket folder (NRC–2022–0188); (2) click the ''Subscribe'' link; and (3) enter an email address and click on the ''Subscribe'' link.

Dated: October 11, 2023.

For the Nuclear Regulatory Commission.

Catherine Haney,

Acting Executive Director for Operations.

[FR Doc. 2023–23452 Filed 10–27–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[NRC–2023–0172]

Draft Regulatory Guide: Preemption Authority, Enhanced Weapons Authority, and Firearms Background Checks

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft Regulatory Guide (DG), DG–5081, ''Preemption Authority, Enhanced Weapons Authority, and Firearms Background Checks.'' This DG–5081 is proposed Revision 1 of Regulatory Guide (RG) 5.86 of the same name. This DG provides an approach acceptable to the NRC staff for use by licensees under NRC regulations, ''Physical Protection of Plants and Materials,'' regarding stand-alone preemption authority, combined preemption authority and enhanced weapons authority, and firearms background checks.

DATES: Submit comments by December 14, 2023. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0172. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Phil Brochman, Office of Nuclear Security and Incident Response, telephone: 301–287–3691; email: *Phil.Brochman@nrc.gov,* or Stanley Gardocki, Office of Nuclear Regulatory Research, telephone: 301–415–1067; email: *Stanley.Gardocki@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0172 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0172.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* DG–5081, ''Preemption Authority, Enhanced Weapons Authority, and Firearms Background Checks,'' and its associated regulatory analysis are available in ADAMS under Accession No. ML23198A185 and ML23200A284, respectively.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2023–0172 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Additional Information

The NRC is issuing for public comment a DG in the NRC's ''Regulatory Guide'' series. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

The DG, entitled ''Preemption Authority, Enhanced Weapons Authority, and Firearms Background Checks,'' is temporarily identified by its task number, DG–5081.

Proposed Revision 1 to RG 5.86 is being revised on a limited-scope basis to provide additional guidance on preemption authority, enhanced weapons authority, and firearms background checks. These new requirements are part of the NRC's final rule, titled ''Enhanced Weapons, Firearms Background Checks, and Security Event Notifications'' (hereafter the Enhanced Weapons rule), that was published in the **Federal Register** on

March 14, 2023 (88 FR 15864). These provisions are found in the NRC's regulations under section 73.15 of title 10 of the *Code of Federal Regulations* (10 CFR) and 10 CFR 73.17.

Proposed Revision 1 to RG 5.86 provides acceptable methods that eligible applicants and licensees (collectively referred to as licensees in this DG) may use to request and use either stand-alone preemption authority or combined preemption authority and enhanced weapons authority and to conduct related firearms background checks. DG–5081 also includes examples, considerations, and guidance to assist licensees and their security personnel in understanding their responsibilities in implementing the provisions of 10 CFR 73.15 and 10 CFR 73.17.

Following the publication of the final rule and RG 5.86, the NRC staff conducted several pre-implementation workshops with licensees. The NRC staff also participated in industry-led forums and symposiums in May and June 2023. In these meetings industry raised questions about RG 5.86 and identified potential inconsistencies and areas where additional clarification would be beneficial to licensees to implement the Enhanced Weapons rule effectively and efficiently. The NRC staff has reviewed the issues raised by industry and agrees that further clarification, revision, and supplementation of the guidance contained in RG 5.86 will be of value. Accordingly, the NRC staff is proposing to conduct limited-scope revisions to RG 5.86 to address these issues, including providing notice and opportunity for public comment on the proposed revisions.

To assist with stakeholder review of the limited scope changes to DG–5081, staff notes the following changes have been proposed:

Section B, ''Discussion'' Topics:

- ''Reason for Issuance''—updated to reflect rationale for changes to the RG.
- ''Standalone Preemption Authority and Combined Preemption Authority and Enhanced Weapons''—updated to clarify the three potential pathways by which a licensee could obtain combined preemption authority and enhanced weapons authority.
- ''Firearms Background Check, paragraph 1''—clarified background check requirements for licensee security personnel who are not assigned duties requiring access to covered weapons.
- ''Firearms Background Check, paragraphs 10–12''—clarified requirements for licensee security personnel's access to covered weapons during and after the 10 CFR 73.15 approval process.

Section C, ''Staff Regulatory Guidance'':

- Position 5, ''Completion of Training and Qualification before Use of Enhanced Weapons,'' paragraph 1—modified language in first sentence to say ''using.''
- Position 5, paragraph 2—clarified training requirements for staff with access to enhanced weapons who are not assigned duties that would require them to use enhanced weapons.
- Position 6.1, ''General Requirements for Fingerprints and Firearms Background Checks,'' example 19—clarified the conditions that must be met in order to exempt licensees from the requirement to perform a new firearms background check for security personnel transferring from one licensed facility to another licensed facility.

The staff is also issuing for public comment a regulatory analysis (ADAMS Accession No. ML23200A284). The staff developed a regulatory analysis to assess the value of issuing or revising an RG, as well as alternative courses of action.

As noted in the **Federal Register** on December 9, 2022 (87 FR 75671), this document is being published in the ''Proposed Rules'' section of the **Federal Register** to comply with publication requirements under 1 CFR chapter I.

III. Backfitting, Forward Fitting, and Issue Finality

Issuance of DG–5081 as a final RG would not constitute backfitting as that term is defined in 10 CFR 50.109, ''Backfitting,'' 10 CFR 70.76, ''Backfitting,'' or 10 CFR 72.62, ''Backfitting,'' and as described in NRC Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests,'' to affect the issue finality of an approval issued under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants;'' or constitutes forward fitting as that term is defined and described in MD 8.4. The staff also does not intend to use the guidance to support NRC staff actions in a manner that constitutes forward fitting as that term is defined and described in MD 8.4. If a licensee believes that the NRC is using this proposed revision to RG 5.86 in a manner inconsistent with the discussion in the Implementation section of DG–5081, then the licensee may file a backfitting or forward fitting appeal with the NRC in accordance with the process in MD 8.4.

IV. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html.* Suggestions will be considered in future updates and enhancements to the ''Regulatory Guide'' series.

Dated: October 24, 2023.

For the Nuclear Regulatory Commission.

Stephen M. Wyman,

Acting Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2023–23795 Filed 10–27–23; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF STATE

22 CFR Part 62

[Public Notice: 11121]

RIN 1400–AF12

Exchange Visitor Program—Au Pairs

AGENCY: U.S. Department of State.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: The U.S. Department of State (''Department of State'') proposes to amend existing Exchange Visitor Program regulations governing the Au pair category to clarify and modernize the au pair program, by, among other things, restructuring the child care and educational components, replacing the EduCare program with the part-time option, enhancing au pair and host family orientation requirements, formalizing standard operating procedures for rematching au pairs with new host families, and proposing new requirements to strengthen au pair protections. The Department of State encourages public comment on the proposed rule, particularly the restructuring of the au pair program and the calculation of the weekly compensation.

DATES: The Department of State will accept public comments on the proposed regulation until December 29, 2023.

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

- Visit the *Regulations.gov* website at: *https://www.regulations.gov* and search for the docket number DOS–2023–0025.

- *Email: JExchanges@state.gov*. You must include RIN 1400–AF12 in the subject line of your message.
- All comments should include the commenter's name, the organization the commenter represents, if applicable, and the commenter's email address. If the Department of State is unable to read your comment for any reason, and cannot contact you for clarification, the Department of State may not be able to consider your comment. After the conclusion of the comment period, the Department of State will publish a Final Rule (in which it will address relevant comments) as expeditiously as possible.

FOR FURTHER INFORMATION CONTACT: Karen Ward, Director, Office of Private Sector Exchange Designation, Bureau of Educational and Cultural Affairs, U.S. Department of State, SA–5, 2200 C Street NW, Washington, DC 20522–0505. Telephone: 202–733–7852. Email: *DesignationAuPair@state.gov*.

SUPPLEMENTARY INFORMATION: The Mutual Educational and Cultural Exchange Act of 1961 (Pub. L. 87–256) (''Fulbright-Hays Act'' or ''Act'') vests the Department of State with the authority to administer authorized cultural and educational programs. 22 U.S.C. 2451, *et. seq*.

Congress enacted the Fulbright-Hays Act in order to ''increase mutual understanding between the people of the United States and the people of other countries,'' ''strengthen the ties which unite us with other nations,'' ''promote international cooperation for educational and cultural advancement,'' and ''assist in the development of friendly, sympathetic, and peaceful relations between the United States and other countries of the world.'' *Id.* § 2451. Consistent with those purposes, the relevant regulations observe that the Exchange Visitor Program ''assist[s] the Department of State in furthering the foreign policy objectives of the United States.'' 22 CFR 62.1(a).

Au pairs are foreign nationals who travel to the United States on a J–1 visa to live with an American host family, while caring for the host families' children, enrolling in educational programs, and engaging in a variety of cultural activities. To that end, au pairs are ''afforded the opportunity to live with an American host family and participate directly in the home life of the host family.'' 22 CFR 62.31(a). The Au pair category of the Exchange Visitor Program is an important tool of U.S. public diplomacy that furthers the Administration's foreign affairs objectives. The program develops young foreign ambassadors who return to their home countries more aware of American values, culture, and leadership, and provides reciprocal cultural and educational benefits to the American families hosting the au pair visitor, especially the young children in the au pair's care.

The Department of State has carefully crafted a uniform system of regulations designed to protect au pairs and their host families while maintaining an environment conducive to a comprehensive federal educational and cultural exchange program. It is the development of mutual understanding and shared cultures that benefits au pairs, their host families and communities, and the foreign relations of the United States. American host families compensate au pairs and subsidize the program's required educational and cultural component, while exposing their children to international and intercultural differences and similarities.

The Department of State's public diplomacy objectives are best realized if all participants in the Exchange Visitor Program have positive cultural immersion experiences. The au pair program is only one of two programs that place exchange visitors into private homes, a situation that requires recognition of the sensitive relationships that may develop in such a merged household, when participants may not always have the same expectations. Decades of au pair placements have confirmed that regulations governing this category must include enhanced monitoring requirements and protections for au pairs to safeguard their health, safety, and welfare, as well as their positive experiences as exchange visitors and to ensure that the interests of au pairs are fully respected. Au pairs specifically participate in a unique program that requires living with a host family to foster direct participation in their home life while providing child care.

The Department of State acknowledges concerns by interested third parties that there is a significant geographic variation in the cost of living across the United States and about whether the federal minimum wage rate in some states is sufficient to cover au pair expenses. There is also an increase in the number of states and localities where the minimum wage exceeds the federal minimum wage. The Department of State also understands that collaboration with all stakeholders, including organizations that advocate on behalf of domestic workers, advances the objective of protecting the health, safety, and welfare of au pairs. Au pairs participating in a foreign policy program must be adequately compensated and protected from abuse.

The Department of State underscores the cultural immersion purpose of the au pair program, which has always distinguished au pairs from domestic childcare workers. At the same time, the Department of State wants to ensure au pairs have similar protections as those afforded to domestic workers. To this end, the Department of State proposes redefining the structure of the au pair program options and their associated hours and compensation calculations, including incorporating differences in federal, state, and local minimum wage rates so that the highest applicable rate within each tier (or the highest applicable minimum wage rate, if higher) applies to all au pairs. At the same time, the Department of State would preserve other fundamental elements of the Au pair category that underpin the success of this cultural exchange program as an immersion into American family life.

Program Structure

In accordance with its exclusive regulatory authority and to further the foreign policy and diplomacy goals of the Fulbright-Hays Act, the Department of State devised the Au pair category of the Exchange Visitor Program to be distinct from domestic childcare workers. While the au pair program provides many families with high-quality childcare, the program specializes in providing an enriching cultural experience for the children and for a young person from another country. The Department of State (and formerly the U.S. Information Agency) has implemented and overseen the Au pair category since its inception as a federally regulated program that effectuates a variety of foreign affairs objectives, including promoting cultural exchange and fostering mutual understanding. It serves as a unique diplomatic tool that achieves the Fulbright-Hays Act goals by inviting young foreign persons to live and provide childcare with American families, learn, and absorb our culture and language, pursue additional educational opportunities, and then return to their home countries.

To further enhance the au pair program, the Department of State is proposing to set certain baselines for this type of exchange program and limit the number of childcare hours per program as outlined in proposed § 62.31(a). Au pairs and host families would choose either a ''part-time'' program with childcare hours between 24–31 hours per week, or a full-time program of child care hours between

32–40 hours per week. As further discussed below, the au pair's weekly childcare compensation would be based on the maximum hours of the chosen option, even if the au pair worked fewer hours. Under this new structure, au pairs would not work hours in excess of each option's maximum limit, except under very limited exigent circumstances with notification by the host family to the sponsor as described below. Sponsors must have policies and contingency plans in place for host families that need to report exigent circumstances and are responsible for ensuring excess childcare hours are infrequent. When part-time au pairs work more than 31 hours in a week but not more than 40 hours, they would be compensated for those excess hours at the hourly rate of the applicable tier identified in proposed paragraph (n)(4)(ii) of the regulations. When part-time or full-time au pairs work over 40 hours in a week, they would be compensated for those excess hours at the hourly rate of the applicable tier identified in proposed paragraph (n)(4)(ii) of the regulations, and they must also be paid any overtime premium due under applicable federal, state, or local law. In addition, under the proposal, au pairs must be paid any other overtime premiums due under applicable federal, state, or local law for other hours worked. For example, California law currently calculates overtime pay due on a daily basis. Proposed paragraph (j)(8) would require in the Host Family Agreement a provision that host families that have au pairs provide childcare duties for more than the maximum number of hours permitted must report this within five calendar days to the sponsor and explain the exigent circumstance requiring the additional hours. The Department of State proposes in paragraph (m)(7) that frequent reports of the au pair providing childcare in excess of the maximum number of hours permitted or a failure to report could lead to the host family's termination from the au pair program.

The current EduCare option, under which au pairs are limited to 30 hours of weekly childcare to allow more time for study, is being replaced by the ''part-time'' program, with a weekly childcare range of 24 to 31 hours. The Department of State believes the name change will facilitate distinguishing between the two program options, and that, as discussed further below, the modification to the hour limitations will ensure a better understanding by host families of the need to ensure that au pairs have sufficient time to pursue the educational and cultural exchange aspects of the program. The language under paragraph (b) has also been updated to mirror other recent category changes and remove the sentence, ''Such designation shall be for a period of two years and may be revoked by the Department of State for good cause'' as this subject is now covered in 22 CFR 62.6(b).[1]

The proposed rule maintains many regulatory provisions that have been successful over the years. However, the Department of State recognizes that there are many ways to modernize the au pair program, ensuring it is consistent with the authorizing legislation's focus on the foreign policy objective of advancing mutual understanding, while at the same time protecting the health, safety, and welfare of these exchange visitors. The proposed rule reflects this balance and maintains the program as a world class U.S. public diplomacy initiative focused on an educational and cultural mission. Major revisions proposed in this proposed rule include requiring sponsors to develop standard operating procedures and internal controls; increased au pair and host family orientation requirements; a higher standard of vetting for au pairs and host families; provisions governing sponsor relationships with third parties acting on their behalf; increased protections for au pairs; enhanced educational options (including virtual classes and volunteerism); additional reporting requirements; and finally, the proposed formalization of and expansion of a Host Family Agreement between au pairs and host families. None of the proposed requirements placed on sponsors in this proposed rule modify the ''General obligations of sponsors,'' as enumerated upon in 22 CFR 62.9. As 22 CFR 62.9(d)(5) states, with regard to both the au pair program and the other exchange visitor programs that the Department of State oversees, a sponsor must ''not represent that its exchange visitor program is endorsed, sponsored or supported by the Department of State or the U.S. Government, except for U.S. Government sponsors or exchange visitor programs financed directly by the U.S. Government to promote international education exchanges.'' Thus, as 22 CFR 62.9(d)(5) makes clear, the au pair program and its implementing regulations do not create a relationship of agency, contract, or representation between the United States government and a program sponsor, and nothing in this rulemaking alters the status of that relationship.

[1] Exchange Visitor Program—General Provisions, 79 FR 60307 (Oct. 6, 2014).

Host Family Agreement

The Department of State is aware that each sponsor implements a Host Family Agreement between the host family and the au pair. While the Host Family Agreement is not a contract, it reflects the understanding between the host family and the au pair regarding the au pair's terms of placement and expected day-to-day activities. In order to further reinforce program transparency, the Department of State proposes to require sponsors to outline placement-specific minimum requirements and disclosures in each Host Family Agreement. The proposed provision at 22 CFR 62.31(j) requires Host Family Agreements to clearly describe all sponsor and third-party fees associated with the exchange program, expected childcare duties, hours, compensation, room and board and all other deductions from compensation, paid time off for vacation and sick leave, the educational allowance, and any required training. The Department of State wants to ensure that both au pairs and host families establish realistic expectations of the au pair experience. Operating from a common point of understanding is key to a successful program.

First and foremost, the Department of State proposes that the Host Family Agreement must specifically identify and list duties and tasks acceptable to the au pair and the host family, consistent with the regulation's guidance on tasks that are appropriate for an au pair. Au pairs should not engage in, and the Host Family Agreement must not include, inappropriate duties as set out in proposed paragraph (j)(2)(ii). All expected and agreed upon duties must be identified prior to signing the agreement, though the agreement may be later updated. Au pairs are not required to perform any tasks not listed in the Host Family Agreement. Any tasks outside the Host Family Agreement performed by the au pair must be voluntary and infrequent, but they may not include activities under paragraph (j)(2)(ii). Au pairs may add clarifying language when signing the initial Host Family Agreement or through an amendment to the Host Family Agreement, to identify and add appropriate duties not listed in paragraph (j)(2)(i). Any changes to the initial or modified Host Family Agreement must be agreed upon in writing by the au pair and host family per proposed paragraph (j)(14).

The Department of State proposes to require that the Host Family Agreement

include a typical weekly schedule which the sponsor has reviewed to ensure it complies with regulatory requirements (proposed paragraph (j)(3)). Although emergencies arise and there will be occasional deviations from the schedule, the creation of a typical weekly schedule allows au pairs to better plan their off-duty time (*e.g.,* pursue cultural activities or the educational component). As with the duty lists, host families or au pairs seeking to modify the weekly schedule permanently would be required to submit the proposed change to the sponsor for review and approval before seeking written approval from the au pair or host family. The Host Family Agreement would also specify that child care hours in excess of the maximum hours allowed under the au pair's program (31 or 40 hours/week) are subject to a separate reporting requirement for host families.

The Department of State proposes to require sponsors to establish standard operating procedures covering amendment to or termination of Host Family Agreements and in the event an au pair or host family requests a rematch (proposed § 62.31(c)(1)(ii)). The Host Family Agreement does not prevent an au pair or host family from requesting a rematch or ending their participation in the au pair program.

Program Conditions

The Department of State also proposes to change the name of the current § 62.31(c) ''Program eligibility'' to ''Program conditions'' to better capture the functionality of the provisions in this paragraph. Over the years, the term ''eligibility'' has become associated with baseline qualifications that enable certain entities to assume distinct roles in the Exchange Visitor Program, (*e.g.,* entities seeking to become sponsors, sponsors seeking to become redesignated, families seeking to host exchange visitors, and foreign nationals seeking to become exchange visitors). Accordingly, the sponsor obligations that are not directly associated with the basic core programmatic functions (*i.e.,* screening, selecting, placing, monitoring, and promoting mutual understanding), are included under the heading ''Program conditions.''

The Department of State is proposing that a sponsor's local coordinator must not have a family or work connection with any of the host families in which they have monitoring responsibilities (proposed paragraph (c)(2)(ii)). The Department of State is also proposing that a local coordinator who is only working part-time (fewer than 32 hours per week) must be responsible for placement and monitoring of no more than 15 au pairs (proposed paragraph (c)(2)(iii)). Local coordinators who work full-time for an au pair sponsor may be responsible for no more than 30 au pair placements (proposed paragraph (c)(2)(iv)). This will allow the local coordinators to spend more quality time monitoring the au pairs.

The Department of State continues to place a high priority on ensuring the health, safety, and welfare of exchange visitors on exchange programs in the United States. Although nearly 40 years have passed since the inception of the Au pair category, certain situations continue to exist that require more focused regulatory attention. The time of greatest vulnerability and uncertainty for au pairs occurs after sponsors determine that irreconcilable differences exist between a host family and the au pair who had been placed in their home. In many such instances, it may not be clear if the irreconcilable difference were caused by the behaviors/actions of the host family, au pair, both, or neither. The Department of State relies on sponsor organizations to work with involved parties to reach a resolution. Program sponsors have a detailed understanding of each au pair placement and are the mediators between the parties. If a sponsor cannot reach a resolution acceptable to all parties, the Department of State will monitor any incidents or complaints until a resolution is reached, ensuring there is no retaliation by any party and allowing au pairs to file complaints to any local, state, or federal enforcement agency. The rematch of an au pair with a new host family involves many competing interests. The original host family is seeking continued child care pursuant to a contract with the sponsor. They may have already paid the educational stipend and perhaps given their au pair two weeks' paid time off. The sponsor may seek to minimize its costs when finding new matches for both the host family and the au pair. The au pair is seeking a continued cultural and educational experience. The host family may not be willing or able to keep the au pair in their home until a new host family can be arranged.

To address the issues surrounding au pair rematching, the Department of State is proposing that sponsors develop and implement standard operating procedures that address the range of circumstances that may evolve when an au pair leaves a host family home. The major issues associated with rematching generally can be assigned to one of the following categories: (1) where an au pair will live after leaving the host family home and who is responsible for expenses incurred during this transition period; (2) how to equitably split between the old and new host families the cost of the educational stipend and the benefits of paid time off for weekends, vacation, and sick leave; (3) the process sponsors follow to find new placements for au pairs; and, (4) the process and criteria for determining whether an au pair cannot be rematched and must end the program early. Each of these situations is discussed separately below.

When a sponsor determines that an au pair is not suited for the current placement, the Department of State's first concern is that the sponsor's standard operating procedures cover where the au pair will live and who will be responsible for living expenses (*i.e.,* food and lodging) at no additional cost to the au pair until the au pair is placed with a new host family or returns home prior to the original program end date (proposed paragraph (c)(1)(iii)). Also, if an au pair can only be rematched with a family in a different geographical location, the issue of which party is responsible for the cost of transportation to the new location must be part of a sponsor's standard operating procedures. As proposed in paragraph (c)(1)(viii), sponsors must establish standard operating procedures and processes for handling issues, complaints, and emergencies during routine monitoring, as well as written concerns by au pairs or host families.

Individuals seeking to become au pairs anticipate positive experiences, so it may not occur to them that they could face several days or weeks after leaving a host family home when their wages stop, but their need for food and/or lodging does not. Sponsors would be required to develop plans to cover such situations and inform applicants of these plans before accepting them into their programs. Au pairs not eligible for a rematch should be assisted immediately in returning to their home country.

The Department of State is proposing a new paragraph (c)(3) on vetting foreign third parties, beyond what is required in § 62.9(f). Proposed paragraph (c)(3)(ii) provides that sponsors would annually review and maintain specific documentation for foreign third parties (*i.e.,* proof of business license, disclosure of legal actions, summary of exchange program experience, marketing materials, and financial statements). Sponsors would also implement standard operating procedures and internal controls to ensure that foreign entities comply with the terms of such agreements.

Host Family Eligibility

As with the proposed rule for local coordinators, proposed paragraph (h) provides that host family members must not be a relative to the au pair and the host family commits not to reside outside of the United States and its territories for longer than a cumulative total of 30 days or at a domestic location within the United States that is more than one hour's drive from a local coordinator for longer than a cumulative total of 30 days during the au pair's program. Au pairs make the commitment to a host family placement in the United States for one year and would not be required to reside outside the United States for more than 30 days.

Orientations

The proposed rule distinguishes between the orientation requirements prior to departure and post-arrival for au pairs (§ 62.31(f)). There is also a proposed paragraph for host family orientations (§ 62.31(i)). Proposed § 62.31(f)(1)(i) would establish that before au pairs depart their home countries, sponsors (or third parties acting on their behalf) must present to the au pairs an executed copy of the Host Family Agreement (if they do not already have one in their possession). The entities that conduct the pre-departure orientation must ensure that the agreement is signed and initialed by both parties. Au pairs would continue to not be permitted to travel to the United States without a fully executed agreement. Sponsors would also be required to inform au pairs of the requirement that they take with them either a pre-paid return airline ticket or a pre-paid voucher equivalent to the cost of a return ticket to ensure that they can fund their return trip home at the end of the program (proposed paragraph (f)(1)(iii)). As will be discussed *infra,* sponsors that are unable to rematch qualified au pairs would be required to refund to the au pair a portion of the cost of the return ticket, based on the length of time the au pair participated in the program. This section also maintains the requirement that au pairs be apprised of the role that the au pair program plays in achieving U.S. foreign policy objectives by exposing participants to U.S. values, customs, and norms. They also must be advised of the importance of completing the educational component of their program.

Host family orientation is an important part of an au pair placement because setting realistic expectations at the outset helps to ensure a successful placement. The Department of State proposes to add several requirements to this paragraph. First, the proposed rule would specify that host family orientations cannot take place until the placement is secured and that all adult members of the household must participate in the orientation (proposed paragraph (i)(1)). Sponsors may work with the host family on accommodations so that all members of the household receive the orientation. The proposed regulation would also identify certain documents that the sponsor (or local coordinator) must provide and certain topics they must discuss. The documents a sponsor (or local coordinator) must present include the following: a copy of the fully executed Host Family Agreement; a copy of § 62.31 of the au pair regulations and any Department of State-issued brochures or letters regarding the au pair program; and a print-out of the current page(s) from the Internal Revenue Service's website on the topic of taxation of nonresident aliens. The link can be found at: *https://www.irs.gov/individuals/international-taxpayers/taxation-of-nonresident-aliens.* The sponsor should focus a discussion around the following topics: the purpose and intent of the au pair program and the family's role in achieving foreign policy objectives; cultural differences; all topics listed in the Host Family Agreement; the process of documenting au pair work hours; reporting problems and seeking assistance from the sponsor organization and/or the Department of State; the sponsor's obligation to ensure they provide the au pair a safe, comfortable, and clean home environment; and the sponsor's policies on reporting to the sponsor any material changes in family circumstances or composition, as well as sponsor policies for when an au pair needs to rematch with a host family.

Any training that the au pair requires prior to the beginning of their exchange program shall be provided by the sponsor as proposed in § 62.31(g) and may be compensable under the Fair Labor Standards Act (FLSA) and/or applicable state and local law. *See* 29 CFR 785.27 through 31.

Protections

The Department of State has included a new paragraph ''Au pair limitations and protections'' in proposed § 62.31(k) to ensure that the au pair's time is balanced appropriately between personal time (for pursuing educational and cultural activities) and child care time.

First, the Department of State would identify leave benefits to which an au pair is entitled, (*e.g.,* adequate time off between child care duty obligations for rest and guaranteed paid time off and sick leave). Such benefits would also apply to au pairs who have extended their programs, and the number of days of leave for extensions are scaled to match the length of the extension period. With respect to paid time off, host families would be required to grant the leave that the au pair requests, so long as such request is made four weeks prior to the beginning of such leave. Of course, host families may be flexible and allow such leave if the au pair requests it with less lead time.

At a minimum, sponsors would ensure that host families give au pairs an uninterrupted eight-hour period of rest every 24 hours to ensure adequate sleep and time away from duty (proposed paragraph (k)(1)(ii)). In addition, host families must give au pairs one and one-half consecutive days off (36 hours) each calendar week and one complete weekend (48 hours) off each calendar month. The Department of State is introducing sick leave into the au pair program at the rate of 56 hours of paid sick leave for a 12-month program and a prorated number of sick leave hours for program extensions shorter than 12 months (proposed paragraph (k)(1)(iv)). If the need for sick leave is foreseeable, the request should be made seven days in advance. If the need for sick leave is not foreseeable, the au pair should request leave as soon as practicable after becoming aware of the need for sick leave.

This rulemaking also proposes in § 62.31(k)(1)(v) to provide 80 hours of paid time off (*i.e.,* the equivalent of ten working days) for a 12-month program, at a time the au pair requests. The host family must permit the au pair to take 40 hours of such leave in conjunction with a 36- or 48-hour weekend. Additional guidance to sponsors in ensuring compliance with the regulations include clarification that host families cannot dictate when au pairs may take vacation and they may not subtract any time off from the au pair's 80 hours leave time if the au pair joins a family vacation.

Further, the proposed rule would explicitly state that no host family may deprive an au pair of access to, or hold or withhold without the au pair's permission, an au pair's identification papers (including passport and Social Security card), cellphone, flight tickets or other travel documents, Form DS–2019, or other personal property, or prevent communication between an au pair and the sponsor or the Department of State at any time, and between the au pair and his or her family while the au pair is not providing child care

(§ 62.31(k)(1)(vi)). Sponsors would be required to ensure that host families provide au pairs a safe, comfortable, and clean home environment free from sexual harassment, exploitation, or any other form of abuse, and they must respect the au pair's privacy, including both their personal living space and their personal belongings.

Sponsors would be explicitly required to ensure that host family members do not photograph or create a video recording (*e.g.,* use a nanny-cam) of an au pair without prior and ongoing consent by the au pair (proposed paragraph (k)(1)(viii)). Sponsors would also be required to ensure that host family members do not photograph or create a video recording of an au pair's private bedroom or primary bathroom while the au pair occupies them. The au pair is expected to respect the privacy of the host family children and should not take or use photographs of the children without parental consent.

The Department of State has created an exchange visitors' rights and protections trifold, which is available to all exchange visitors at: *https://j1visa.state.gov/participants/current/other-resources* (From *j1visa.state.gov,* navigate to Participants → Current J–1 visa holders → Other Resources → Participant Brochures).

Au Pair Rematch to a New Host Family

Both Department of State and sponsor surveys indicate broad satisfaction with the au pair program among current au pairs and alumni. Most au pairs return home with positive memories and long-lasting friendships. Difficulties arise, however, when either a host family or an au pair seeks a rematch due to irreconcilable differences. The Department of State understands that there are certain circumstances that demonstrate that an au pair should not be rematched with a new family, (*e.g.,* putting the children at risk; habitually breaking program, sponsor, or house rules, or behaving in a manner that could bring notoriety and disrepute to the Exchange Visitor Program). However, when au pairs should be rematched due to host family behavior, the au pairs are at a disadvantage: it is often difficult for sponsors to place an au pair with a history of problems with a host family—even if the host family was the problematic party in the arrangement. These new proposed regulations help protect au pairs seeking rematch by establishing different sponsor obligations to au pairs concerning rematching and refunding depending upon whether a sponsor deems an au pair to be qualified or unqualified for rematching.

First, as discussed above, sponsors would be required to establish standard operating procedures they use to determine whether a displaced au pair is qualified for rematch. Sponsors would be required to share with new au pairs during the post-arrival orientation at the onset of their programs the criteria that they use in making such a determination. Standard procedures will prevent sponsors from declaring that an au pair that may be difficult to rematch is not qualified to be rematched. Sponsors screen both host families and au pairs for the program. It is the sponsors' responsibility to make certain that both parties have realistic expectations of what being or hosting an au pair entails. Au pairs bear significant costs, including air fare, to travel to the United States to participate in the Exchange Visitor Program. If circumstances outside their control require that the sponsor find them a new family, sponsors must have every incentive to find them a new placement in an expedient, fair and good faith manner.

Next, sponsors would be explicitly required to report the need for a rematch to the Department of State by the next business day as outlined in the paragraph (r)(2) and § 62.13(d). As also discussed above, the health, safety, and welfare of an exchange visitor is a primary Department of State concern. Circumstances may prevent a displaced au pair from remaining in the host family home until sponsors rematch a qualified au pair or until sponsors end an au pair's program (if circumstances warrant such action) and the au pair returns home. When an au pair is removed from the host family's home, sponsors must report this to the Department of State within the next business day and pursuant to reporting requirements at paragraph (r)(2). In accordance with § 62.31(l)(1), sponsors would be required to end the au pair's program in the Student and Exchange Visitor Information System (SEVIS) if the sponsor determines that actions on the part of the au pair demonstrate their unsuitability to be placed with a new host family. Au pairs should return promptly home (using the return ticket or voucher, if they were required under sponsor policy to pay for one at the beginning of the program). Otherwise, sponsors must ensure that a return flight has been secured.

Sponsors, however, have a greater responsibility to displaced au pairs who are qualified to be rematched. As discussed above, sponsors would be required to develop standard operating procedures for rematching qualified au pairs. Sponsors are responsible for ensuring the au pairs have a safe place to live and enough money for basic living expenses while they are awaiting a rematch. The Department of State recommends that sponsors establish a maximum period during which they will attempt to rematch the au pair and after which, they will be responsible for refunding a portion of all fees the au pair paid the sponsor, and the Department of State recommends that sponsors consider refunding a portion of a foreign third-party fee at a proportion determined by the length of time they were on program. The Department of State recommends, but does not require, that sponsors pay to au pairs the refunds due from any foreign third party and include reimbursement policies in their written agreement with such parties, keeping in mind that au pairs returning home may have additional costs expenses and could benefit from a prompt and total refund. Sponsors are reminded that the failure of their third parties to make full and timely required refunds will be attributed to the sponsor. Such financial arrangements are best handled by sponsors and their third parties and should not involve the au pairs. The Department of State seeks comment on such refund policies from sponsors and third parties, including on whether sponsors should be required to pay to au pairs the refunds due from any foreign third party.

When sponsors successfully rematch qualified au pairs, it is up to the sponsors to work out with the new and prior host families the fair allocation of non-income benefits and the educational stipend, some portion of which the first family may have already provided the departing au pair. This is a business arrangement between sponsors and each host family, that by definition, should not involve the au pair. Under the proposed rule, au pairs that have completed 75 percent of their initial program or are on six-, nine-, or 12-month extensions may not request a rematch and are not entitled to any refund of fees paid (proposed paragraph (l)(4)).

Hours

The Department of State also proposes in § 62.31(m) that the au pair's hours and weekly schedule be outlined in the Host Family Agreement. Host families and au pairs would be required to discuss proposed changes, which the sponsor must approve and document. The hours of child care for which au pairs must be compensated is the maximum number of child care hours permitted within the selected exchange program, unless the au pair has exceeded the maximum hours

permitted, in which case the au pair must also be compensated for those excess hours (proposed paragraph (n)(1)). In all circumstances, the sponsor would be required to ensure the au pair is compensated for any hours worked, even if in excess of the maximum number of child care hours permitted. Even if au pairs work fewer hours, host families would be required to pay them for 31 hours for a part-time program or 40 hours for a full-time program. Au pairs deserve to know the hours of child care they are expected to provide and the amount of compensation they will receive each week. Inconsistencies in hours may lead to issues in being able to pay their weekly expenses. The 40-hour maximum is a change from the current regulations at 22 CFR 62.31(a) and (j)(1), under which one program allows au pairs to regularly provide up to 45 hours of child care a week.

The Department of State believes reducing the maximum weekly child care hours for full-time au pairs has several benefits. While providing child care is a crucial part of the au pair program, au pairs come to the United States with a primary intent to engage in cultural exchange. Reducing the weekly working hours from 45 to 40 can help to ensure that au pairs have adequate time for fulfilling the education requirement, experience socializing in the community, and time for rest and leisure, which is important for their physical and mental well-being.

By reducing their maximum weekly working hours, au pairs may be able to better manage their workload and avoid the negative effects of chronic stress. More host families are now able to work remotely or have flexible schedules, which may reduce the time they need au pairs to provide child care. Furthermore, reducing the weekly working hours of au pairs can help to improve the quality of care they provide to the host family. Some host families (or potential host families) may require more child care hours than the new regulations would allow. The number of families interested in the au pair program may decline as families may turn to other child care options. The Department of State recognizes that more Americans and potential au pairs may forego the cultural exchange opportunities available through the au pair program, but believes the reduction in maximum hours is necessary to the overall success of the program.

As discussed elsewhere, an au pair may not work hours in excess of their program's maximum-hours limit except under very limited exigent circumstances. In addition, the Department of State proposes to explicitly prohibit ''unworked'' hours (*i.e.,* the difference between an au pair's actual hours worked in a week and their program's maximum-hours limit) from being carried over to the next week to exceed the program's maximum-hours limit in that next week in proposed paragraph (m)(1)(ii). In other words, each workweek stands alone. The Department of State proposes to require host families and au pairs to track daily child care hours in a sponsor-approved format.

The proposed rule would expressly prohibit au pairs from providing child care between the hours of 11:00 p.m. and 5:00 a.m. unless exigent circumstances arise (proposed paragraph (m)(4)). The Department of State seeks comment on whether a compensation or other mechanism could similarly discourage host families from routinely failing to make alternative arrangements.

In addition to providing child care, au pairs participate in regular family activities and cultural experiences, such as going to restaurants, movies, theme parks, museums, theatre/opera, concerts, and sporting events with family members The au pair regulations also currently require au pair sponsors to host a ''family day conference'' that all au pairs and host families must attend at least once annually (current 22 CFR 62.31(i)(3) and proposed paragraph (p)(4)). This proposal would amend the regulations to include the required family day conference as part of the au pair's workday so that it will be counted for purposes of the programs' maximum hours threshold. Relatedly, the Department of State proposes that the regulations be amended to clarify that time spent with host families in which the au pair is entirely relieved of all child care duties and voluntarily participating as a member of the family (and free to use the time for their own purposes), not as a caretaker, is not considered work hours. This would be consistent with Department of Labor guidance regarding hours worked under the FLSA for workers who provide similar services as au pairs. *See, e.g.,* 29 CFR 552.102(a), 29 CFR 785.23, and Wage and Hour Division Fact Sheet #79D (available at *https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs79d.pdf*). Thus, time spent by an au pair voluntarily attending a meal, movie, or sporting event with a host family, for example, and during which the au pair is entirely relieved from all child care duties, would not be work hours.

Compensation

Stipends. The current compensation mechanism provides for a standard weekly stipend based on the current 45-hour workweek, regardless of how many hours an au pair works. The minimum weekly stipend for au pairs is currently calculated by multiplying the current federal minimum wage by 45 hours and then deducting a credit for room and board. This formula applies across the country, without taking into account the geographically-specific variations in costs of living. Numerous states and localities have adopted minimum wage rates that exceed the federal FLSA minimum wage. Over the past few years, au pair and interest group confusion over and dissatisfaction with the current compensation framework has resulted in nation-wide litigation.

As discussed below, the Department of State has previously expressed the view that a nationwide approach to au pair compensation required a nationally uniform compensation formula based on the federal minimum wage and that the current regulations were intended to preempt and thus render inapplicable conflicting or otherwise inconsistent state and local labor laws, including state and local minimum wage and overtime pay requirements. However, the Department of State recognizes that the context in which the au pair compensation formula was established in the mid-1990s is no longer appropriate and has considered potential alternatives during its ongoing review of the category. The Department of State's review of the Au pair category of the Exchange Visitor Program has revealed that the federal minimum wage no longer provides sufficient compensation to au pairs placed in geographic areas in which growing number of states and localities have adopted state or local minimum wages that exceed the federal minimum wage. Accordingly, the Department of State is proposing to modify the regulations to require the calculation of au pairs' weekly compensation to be based on the tier of the highest of the applicable federal, state, or local minimum wage in the city/state of host family residence so that au pairs are paid at least the highest applicable minimum wage. Under the proposed rule, sponsors would require host families to identify their state and local minimum wages on their host family application, rates which the sponsor should confirm. Sponsors would also require host families to notify the sponsor if there is a change to the federal, state, or local minimum wage during the au pair's program, and if necessary, initiate an updated Host

Family Agreement. The Department of State understands that some host families may not be able to afford an au pair and may be priced out of the program. Sponsor organizations could suffer negative business consequences and revenue losses if the host family pool decreases and thus creates less demand for au pairs. Prospective au pairs may only be interested in going to destinations in the United States with higher minimum wages, contributing to diminished diversity and equity in the program. Some stakeholders may prefer a single compensation formula. Therefore, the Department of State is seeking to simplify the administration of the compensation structure and, as discussed later, seeks public comment on the delayed implementation of these and the other proposed revisions.

The Department of State is proposing to modify § 62.31(n)(4) to reflect a four-tiered au pair compensation mechanism based on the highest of the federal, state, or local minimum wage. The Department of State is not asserting that its proposed regulations would preempt state and local minimum wage and overtime pay laws as they apply to au pairs.

The Department of State proposes to adopt a national four-tiered wage formula to provide consistency in au pair compensation across geographic regions and in areas with similar local economic conditions. The proposed tiered compensation chart is as follows:

TABLE 1—PROPOSED COMPENSATION TIERED CHART

	Based upon the host family city, the highest of federal, state, or local minimum wage	Au pair receives
Tier 1	$7.25–$8.00 per hour	$8 per hour.
Tier 2	$8.01–$12.00 per hour	$12 per hour.
Tier 3	$12.01–$15.00 per hour	$15 per hour.
Tier 4	$15.01–$18.00 per hour	$18 per hour.*

* Or the applicable federal, state, or local minimum hourly wage, if higher.

A four-tiered wage formula would also ease administrative burdens in regulating or overseeing au pair compensation when the relevant minimum wage changes within a tier. The maximum hourly wage an au pair would receive is normally determined by the wage of the highest tier in the compensation chart; however, if the federal, state, or local government has a minimum hourly wage higher than the highest hourly rate on the chart, then the au pair must be paid that higher hourly wage.

The proposed rule would provide that the Department of State will periodically, but no less than every three years (or at any shorter interval that is desirable and feasible), update the hourly pay rates in the four-tiered au pair compensation chart by **Federal Register** notice in response to changing economic conditions (*e.g.,* if a state or locality's minimum wage exceeds the highest tier). The increase will be accomplished by adjusting the upper range of each tier by an identical amount each update cycle. For example, if the Department of State chooses in the first update cycle to increase the upper range of each tier by $2, the chart would read as follows:

TABLE 2—HYPOTHETICAL COMPENSATION TIERED CHART ADJUSTMENT BASED UPON A $2 INCREASE

	Based upon the host family city, the highest of federal, state, or local min wage	Au pair receives
Tier 1	$7.25–$10.00 per hour	$10 per hour.
Tier 2	$10.01–$14.00 per hour	$14 per hour.
Tier 3	$14.01–$17.00 per hour	$17 per hour.
Tier 4	$17.01–$20.00 per hour	$20 per hour.*

* Or the applicable federal, state, or local minimum hourly wage, if higher.

Periodically updating the chart by **Federal Register** Notice is necessary to provide the Department of State with flexibility to increase the hourly pay rates in the compensation chart due to the uncertainty of future economic conditions.

Room and Board. The new regulations at § 62.31(n)(2) address host family deductions for au pairs' room and board. Host families must calculate such deductions according to FLSA requirements. The Department of State currently permits au pair room and board deductions and proposes to maintain a policy in the proposed rule, as described in the terms below.

Under section 3(m) of the FLSA (29 U.S.C. 203(m)), a credit toward the federal minimum wages due an employee is permissible for meals, lodging, and other facilities, if certain requirements are met based on the reasonable cost or fair value of the facilities furnished. The section 3(m) credit may not exceed the ''reasonable cost'' or ''fair value'' of the facilities furnished, whichever is less. *See* 29 U.S.C. 203(m). Reasonable cost is ''not more than the actual cost to the employer of the board, lodging, or other facilities customarily furnished by him to his employees.'' 29 CFR 531.3(a). Credits for room and board may be taken only when the employee actually receives the lodging and meals per 29 CFR 531.30.

The following amounts reflect permissible credits under the FLSA towards an au pair's wages for Meals provided (per day):

Breakfast Up to 37.5% of the minimum wage = $2.72

Lunch Up to 50.0% of the minimum wage = $3.63

Dinner Up to 62.5% of the minimum wage = $4.53

Totals: = $10.88 per day

7 days × $10.88 = $76.16 per week for meals credit.

The following amount is a permissible credit under the FLSA towards an au pair's wages for *Lodging* provided (per week):

Up to seven and one-half times the federal minimum wage for each week.

7.5 × $7.25 = $54.38 per week for Lodging credit.

Pursuant to 29 CFR 552.100, the total permissible credit towards an au pair's wages per week for a full seven days of room and board actually provided is: $76.16 (meals) + $54.38 (lodging) = $130.54.

Calculation of weekly permissible room and board credits does not depend on whether the au pair is full-time or part-time or which wage tier determines the au pair's hourly rate or whether the au pair is paid overtime that week. The credit is determined based on the meals and lodging actually provided to the au pair during the week and is then subtracted from the wages otherwise due the au pair for that week. To the extent that a state or locality permits only a smaller credit for au pairs than permissible credits under the FLSA discussed above, the state or local law or regulation permitting only such smaller deductions would be preempted by these regulations (proposed paragraph (t)).

Overtime. When part-time au pairs work more than 31 hours in a week but not more than 40 hours, the Department of State proposes to require au pairs to be compensated for those excess hours at the hourly rate of the applicable tier identified in paragraph (n)(4)(ii) of the regulations or the highest of the applicable federal, state, or local minimum wage, if higher. When part-time or full-time au pairs work over 40 hours in a week, the Department of State proposes to require au pairs shall be compensated for those excess hours at the hourly rate of the applicable tier identified in paragraph (n)(4)(ii) of the regulations or the highest of the applicable federal, state, or local minimum wage if higher, and they must also be paid any overtime premium due under applicable federal, state, or local law (proposed paragraph (n)(4)(iv)). In addition, the proposed rule would require au pairs must be paid any other overtime premiums due under applicable federal, state, or local law for other hours worked. These regulations would not preempt state and local laws regarding overtime pay as host families are discouraged from requiring au pairs to work additional hours in contravention of program policies and regulatory requirements.

The Department of State encourages public comment on this alternative calculation of au pairs' compensation and welcomes other proposals of alternative calculations that maintain a uniform national stipend formula that accommodates variations in federal, state, and local minimum wage rates. Any viable proposal must remain true to the core objective of all international exchanges conducted pursuant to the Fulbright-Hays Act, *i.e.,* to serve as a cultural program designed to meet the crucial foreign policy goal of enhancing mutual understanding between people of our nation and other nations.

Assuming adherence to the programs' maximum hours provisions, the regulations would continue to not permit week-to-week variation in the stipend amount (although there may be week-to-week variation in the credit taken for lodging and meals actually provided) since, as discussed above, stipends are based on the maximum weekly hours established for the part-time and full-time program options. However, maintenance of a weekly record of hours, payment, and deductions would be required to provide sponsors with documentation to demonstrate that host families are complying with important regulatory requirements. Sponsors would be required to review such documentation to confirm that au pairs are working only the required hours, are provided their paid time off, and are charged for in-kind benefits (*e.g.,* gym membership, cell phones) only as the au pair and host family agreed in the Host Family Agreement and only as permitted by paragraph (n)(3) of the proposed regulations. The Department of State seeks comment on this proposed method of documenting that host families do not require au pairs to exceed the maximum number of child care hours each day or week and that they compensate au pairs (with income and non-income benefits, *e.g.,* leave) in accordance with the regulations.

The proposed rule would require sponsors to ensure that host families provide au pairs copies of this tracking document on a weekly basis throughout the exchange program (paragraph (m)(6)(ii)). Further, sponsor organizations would be required to collect and review copies of the timesheets each month. Such review may be conducted by field or headquarters staff, and sponsors are reminded of their obligation to retain copies of all weekly documents timesheets for three years following the end of the au pair's program in accordance with § 62.10(g).

Educational Component

Because completion of this portion of an au pair program is critical for achieving the objectives of the Fulbright-Hays Act, the Department of State proposes four alternative types of educational programs to provide more flexibility to facilitate au pairs' pursuit of this requirement. The Department of State seeks comment on these or other similar alternatives, especially with respect to the required number of hours for each option and whether the new, higher educational stipend is sufficient given current and perhaps geographically-dependent costs of education.

The regulations retain the traditional academic option currently set forth at 62.31(k) for those au pairs who are seeking the opportunity to advance their academic education while on program by obtaining a minimum of six semester hours at an accredited U.S. academic institution. It should be noted that the academic option being proposed in paragraph (o)(1) is the only one that may have a virtual component. Au pairs would have the option of attending in-person classes or taking a subset of classes online during their program. In-person exchanges are still a critical component of the Exchange Visitor Program and ensure that au pairs have a chance to be exposed to Americans outside of the host family. Thus, the Department of State proposes, under paragraph (o)(1)(i)(A), to permit au pairs pursing the academic option to complete no more than one third of the required coursework online if local circumstances permit.

Not all individuals have academic goals, however, and the interests of some au pairs may be better met through continuing education programs. Accordingly, the Department of State has proposed to allow coursework at continuing educational institutions (§ 62.31(o)(2)) as sufficient for meeting the educational component requirement.

In the past, the Department of State has rejected au pair attendance at, for example, weekend courses at a campus setting that are attended exclusively by au pairs. While this option allows au pairs to interact with one another, it does not provide the opportunity to mingle primarily with U.S. students. However, after further consideration, the Department of State recognizes that courses that are customized for the au pair community offer other distinct benefits. Sponsors and the academic institutions with which they jointly design such courses have the opportunity to develop a curriculum that highlights U.S. history and values, *e.g.,* rule of law, civil rights, and democratic values. Such concentrated exposure to the U.S. culture can provide au pairs with a relevant and focused cultural and historical overview that is not available through traditional academic and educational institutions. Accordingly, the Department of State proposes and seeks comment on this option (§ 62.31(o)(3)).

Depending upon the geographic location where an au pair is placed, there may be limited options for academic and/or continuing education opportunities. As volunteerism is a U.S.

value, the Department of State offers an option that allows au pairs to fulfill half their educational requirement by volunteering with a tax-exempt nonprofit organization as described in section 501(c)(3) of the U.S. Internal Revenue Code (§ 62.31(o)(4)). This provides additional flexibility from both a time perspective and by accommodating the various interests of exchange visitors. The other half of the component may be met by pursuing either academic coursework or continuing education classes. The Department of State seeks comments on all these options and welcomes comments on additional ways of meeting the educational component requirement.

The Department of State recognizes that the cost of education has increased significantly over the years and that an increase in the educational stipend amount is long overdue. The current regulations require host families to pay $500 towards the au pair's six semester hours of education. The Department of State is proposing to increase the stipend paid by host families to $1,200. The review of several two-year or community colleges averaged $130 per credit hour × six credit hours, plus cost of registration, books, etc. The Department of State seeks comment as to whether the increase to $1,200 is sufficient to cover most of the educational expense au pairs will incur (§ 62.31(o)(6)).[2] Host families may pay the stipend either directly to the au pair or to the appropriate institution. As discussed above, in case of a rematch, the Department of State expects sponsors to arrange the equitable distribution of the stipend cost between the host families without involving the au pair. Sponsors must also be prepared to ensure that an au pair that is part-way through a course and is rematched to a new geographical location has sufficient resources to reenroll in classes at the new locale.

As with paid time off and sick leave, the number of education hours au pairs must complete during any extension period would vary, as they do now, based upon the length of the program extension. The Department of State seeks comment on the four options, the required compensation amounts, and the number of hours that should be required for extensions (recognizing that extension periods may not always line up with institutions' course schedules). The Department of State intends for the hour commitment among the four options to be substantially the same and seeks comment on whether its proposed hourly requirements achieve this goal.

Reporting

The Department of State proposes to require third party vetting and reporting similar to that currently required under the Summer Work Travel program. Au pair sponsors would be required to vet all foreign third parties as defined in § 62.2 (*e.g.,* overseas agents or partners) that assist them in fulfilling the program responsibilities under § 62.10 that may be conducted outside the United States. Such vetting would include reviewing and documenting previous bankruptcies or pending legal actions, summaries of the entities' prior J–1 Exchange Visitor visa experience, and copies of sponsor-approved advertising materials. After sponsors have successfully vetted foreign third parties, they would be required to provide the Department of State with that third party's name and contact information (*i.e.,* telephone number, email address, street address, city address, point of contact, and website address) within 30 days of execution of the agreement by providing the Department of State with a Foreign Entity Report. The sponsor also must provide the Department of State with updated contact information for its foreign third party within 30 days after receiving notice of any change in that party's contact information. Although sponsors do not need to work with foreign third parties, they may not work with those foreign third parties that are not included in the Foreign Entity Report. If any material information (*e.g.,* contact information, financial status, relationship with sponsor) changes, sponsors must provide this information to the Department of State within 30 days.

The foreign third parties' initial outreach to potential program applicants sets the stage for participants' expectations about the au pair program. Sponsors must be aware of what the foreign third parties are posting on websites, communicating through social media, and distributing in printed materials to ensure the information conforms to the purpose and intent of the program and meets regulatory requirements. It is important, for example, that the cultural exchange aspects of the program are accentuated, and that au pair applicants' expectations about hours and compensation are realistic.

In addition, to better manage expectations and provide au pair program applicants and selected au pairs with greater transparency regarding the fees they may be charged to participate in the program, the Department of State is adding a requirement that sponsors submit a list of all fees, including recruitment fees or associated costs, that either they or their foreign third parties may charge applicants to apply for and participate in the program. Such list must describe the services associated with each fee and clarify whether the fees are estimated or fixed, refundable or non-refundable, and mandatory or optional.

In 2014, the Department of State extended the management review requirement to other categories of the Exchange Visitor Program. The Department of State is keeping the current regulatory language requiring a report by a certified public accountant until § 62.15(b) of subpart A (General Provisions) is updated. The only proposed change is to add language in which the Department of State will release a schedule approved by the Department of State for submission of the report.

Preservation of Additional Features of the Au Pair Category

As previously explained, the Exchange Visitor Program is first and foremost a diplomatic tool that supports U.S. foreign policy objectives. Accordingly, a number of program features set forth in the regulations are key to the program's operation as a diplomatic tool. Given the Department of State's exercise of its discretion under the Fulbright-Hays Act in arriving at this balance, the Department of State is also proposing to amend the federal au pair regulations to provide explicitly that the regulations establish the exclusive requirements applicable to host families and sponsors on certain matters and may not be supplemented by state or local law. As proposed in paragraph (t)(1), these key program features must not be supplemented or contravened by state or local law, namely: (a) au pair selection; (b) au pair placement; (c) hours and compensation (except for state and local minimum wage and overtime pay requirements, as described below); (d) unemployment insurance tax and employment training taxes; (e) minimum time off and paid time off and sick leave; and, (f) educational component. These elements all work in concert to create a program that meets foreign policy goals of establishing mutual understanding through cultural exchange and emphasizes the value of the au pair's

[2] *https://educationdata.org/cost-of-a-college-class-or-credit-hour* (suggesting the average cost of a credit hour at a community college or in-district school is $141 per credit hour); *https://www.bestcolleges.com/research/college-cost-per-credit-hour* (''Two-year public schools, or community colleges, charge the least at just under $120 per credit hour.'').

integration with an American family even when not providing child care. The Department of State also proposes in paragraph (t)(2) that regulatory framework provided under this section shall preempt any state or local law that, in the Department of State's view, otherwise poses an obstacle to the realization of the objectives of the Au pair category of the Exchange Visitor Program. Notwithstanding the foregoing, state and local minimum wage and overtime pay requirements shall apply to au pairs where applicable and shall not be deemed to be an obstacle to achievement of the objectives of the Au pair category of the Exchange Visitor Program.

Au pair programs operate in the field of foreign affairs, an area that has long been reserved to the U.S. Federal Government. In 1985, and by statute, Congress authorized the Director of the U.S. Information Agency to provide for au pair programs. In 1994, Congress directed the U.S. Information Agency to continue the au pair program within the Exchange Visitor Program and to prescribe regulations governing it (*see* Pub. L. 103–415, 1, 108 Stat. 4299, 4302 (1994)). Congress has since further extended the program and made it permanent in 1997 (see Pub. L. 105–48, 111 Stat. 1165 (1997)). In so doing, Congress believed this distinctly federal program would further the United States' objectives in the areas of foreign relations and international diplomacy, two areas ''inherently federal in character.'' *Buckman Co.* v. *Plaintiffs' Legal Comm.,* 531 U.S. 341, 374 (2001). The Exchange Visitor Program ''originates from, is governed by, and terminates according to federal law.'' *Id.* When the Fulbright-Hays Act authorized educational and cultural exchanges, the Act also created ''a new nonimmigrant visa, category (J), to serve solely the purposes of the Mutual Educational and Cultural Exchange Act of 1961.'' H. R. Rep. No. 1197, at 17 (1961) (Conf. Rep.). The federal regulations provide the exclusive terms under which an au pair exchange visitor may enter the country, as the ''[p]ower to regulate immigration is unquestionably exclusively a federal power.'' *De Canas* v. *Bica,* 424 U.S. 351, 354 (1976).

The Department of State is proposing to expressly preempt state and local law in the areas of au pair selection, au pair placement, and the educational component. Congress has authorized the Department to create a federal international exchange program that brings young adults into the country for an educational and cultural experience. The Department of State balances the needs of au pairs, sponsors, and host families and their communities in these regulations when it determines the eligibility and placement terms that best advance the foreign policy and diplomatic objectives of the federal government. Contrary state rules in these areas would upend that well-considered approach.

In addition, the Department of State is proposing to preempt state and local law in the areas of hours and compensation (except for state and local minimum wage and overtime pay requirements, as described below) and minimum time off and paid time off vacation and sick leave. As discussed *supra,* the Department of State has previously expressed the view that a nationwide approach to au pair compensation required a nationally uniform compensation formula. The Department of State recognizes that the federal minimum wage no longer provides sufficient compensation to au pairs, and that a significant number of states and localities have adopted state or local minimum wages that exceed the federal minimum wage. Accordingly, the Department of State is proposing to modify the regulations to require the calculation of au pairs' weekly compensation to be based on the tier of the highest of the applicable federal, state, or local minimum wage in the city/state of host family residence so that au pairs are paid at least the highest applicable minimum wage. The Department of State also proposes to reduce maximum weekly hours of child care to forty hours and remove the overtime option, with the exception of limited exigent circumstances. State and local law related to room and board deductions would be preempted to preserve a uniform compensation scheme. With this federal structure in place, the au pair program would continue to operate on a nationwide uniform basis for hours and compensation while not preempting state and local minimum wage and overtime pay requirements. The Department of State would not preempt state and local laws regarding overtime pay as host families are discouraged from requiring au pairs to work additional hours in contravention of program policies and regulatory requirements.

Under paragraph (t)(1)(d), the Department of State proposes to preempt all state unemployment insurance taxes and the employment training taxes described below. In addition to carving out a new visa category, the Fulbright-Hays Act amended the Internal Revenue Code relating to the definition of employment for purposes of Federal Insurance Contributions Act (FICA) contributions and the Federal Unemployment Tax Act. Section 110(e) of the Fulbright-Hays Act exempts exchange visitors from paying FICA taxes on services authorized by the program, since they are ''temporarily'' in the United States and ''scarcely have any expectation of realizing benefits from such a tax payment.'' *See* H. R. Rep. No. 1197, at 19. Section 110(f) removes the obligation of employers to pay Federal unemployment tax on certain authorized exchange visitor services.[3] The Conference Report notes that ''exchange visitors could rarely, if ever, be in a position to benefit from unemployment compensation coverage.'' *Id.* Congress crafted a nuanced approach to exchange programs to further U.S. foreign policy objectives, distinguishing exchange visitor programs from temporary employment programs.

Under paragraph (t)(1)(d), the Department of State proposes to preempt all state unemployment insurance taxes and the employment training taxes described below. Under Federal law, compensation paid to au pairs is often deemed to be exempt from the requirement that employers pay Federal unemployment taxes on their wages. The exact conditions for determining when the wages may be subject to Federal unemployment tax can be found by consulting the IRS website on au pairs, *in addition to* Publication 926, Household Employer's Tax Guide.

In most cases, au pairs, who are between the age of 18 to 26, come to the United States to participate for the first time in an au pair program and are required to return home once they successfully complete the program. As the au pair program does not provide work authorization after the program ends, an au pair would not be eligible for unemployment benefits unless they obtained other authorization to work in the United States beyond the au pair program, and payment of

[3] The exemptions from FICA taxes and Federal unemployment tax under section 110 of the Fulbright-Hays Act were codified in sections 3121(b)(19) and 3306(c)(19) of the Internal Revenue Code, respectively. These exemptions apply to the extent that the exchange visitors are nonresident aliens. An exchange visitor who has previously been in the United States on temporary nonimmigrant status as a student, teacher, trainee, or researcher under subparagraph (F), (J), (M), or (Q) of 8 U.S.C. 1101(a)(15) could be a resident alien during their current stay in the United States and, therefore, may be subject to FICA taxes and Federal unemployment tax if their annual wages exceed the applicable dollar threshold. See 26 U.S.C. 3121(b)(19), 3306(c)(19), and 7701(b), and 26 CFR 31.3121(b)(19)–1(a)(1) and 31.3306(c)(18)–1(a)(1).

unemployment taxes on these wages would not be the responsibility of the au pair 's host family. Therefore, the Department of State does not expect host families to be required to pay state or local unemployment insurance taxes or the employment training taxes described below.

Unemployment insurance is a joint state-federal program that provides cash benefits to eligible workers. States have various types of unemployment tax requirements that may require employers to pay a payroll tax, also known as a State Unemployment Tax Act (SUTA) tax. States use funds to pay out unemployment insurance benefits to unemployed workers. States might also refer to SUTA tax as State unemployment insurance, SUI tax, or Reemployment tax (*e.g.,* Florida). In most states, unemployment insurance is an employer-only tax. However, employees in certain states (*e.g.,* Alaska, New Jersey, and Pennsylvania) must also pay an unemployment insurance tax.

Some states have an employment training tax, which generally provides funds to train employees in targeted industries, teach workers new skills, and promote businesses to make businesses more competitive. Like unemployment insurance, employment training taxes are paid by employers and businesses. States refer to employment training taxes using different terms, such as an Employment & Training Investment Assessment (*e.g.,* Texas). In any case, the assessment is imposed on each employer as a percentage of wages paid by an employer. As discussed above, au pairs do not have general work authorization, and once their exchange program ends, are expected to return home. Therefore, employment training taxes do little to protect or benefit au pairs. In addition, the Department of State is aware of the cumulative costs of this rulemaking on prospective host families and seeks to broaden the pool of interested host families as much as possible. The Department of State is concerned about burdening au pair programs with the payment of additional general welfare taxes so as to further restrict affordability of the program to the most wealthy host families. For these reasons, the Department of State proposes to expressly preempt state or local laws related to employment training taxes.

If state and local laws interfere with the fulfillment of the au pair program in a capacity that frustrates Congressional objectives and the President's foreign affairs prerogatives, the Department of State may choose to regulate to reflect the preemption of state and local law. The Department of State proposes this rulemaking to affirm the exclusivity of Federal regulation over the au pair program in certain areas expressly identified in proposed paragraph (t) that could frustrate the primacy of the Federal Government in the conduct of foreign affairs and immigration if such matters were regulated by the States.

In doing so, the proposed rule is consistent with the ruling in *Capron* v. *Office of the Attorney General of the Commonwealth of Massachusetts,* 944 F.3d 9 (1st Cir. 2019). The First Circuit noted in the *Capron* decision that the Department of State ''would be free to preempt . . . [the relevant] state laws now by revising the regulations.'' *Id.* at 44.

In that case, the Department of State advanced its view that the existing Federal au pair regulations already preempt state and local laws pertaining to the terms of employment in the au pair program. The au pair program is a creation of Federal law and operates in the spheres of foreign affairs and immigration, two areas that have been exclusively reserved to the Federal Government. The Department of State argued that the requirement that Responsible Officers of programs with an employment component have a ''detailed knowledge of federal, state, and local laws pertaining to employment'' did not indicate otherwise. The Department of State has an important policy interest in ensuring that applicable state or local law with respect to matters not addressed by Federal regulations continues to protect participants in the program. While *Capron* dealt with whether Federal regulations preempt Massachusetts from requiring host families to comply with various state laws, the Department of State believes its arguments would have applied with equal, if not greater, force in the context of preemption of state law directed at sponsors. The Department of State argued that the regulations provide a comprehensive framework for the terms of employment in the program, leaving no room for state law whether applied to host families or sponsors.

Nevertheless, the First Circuit decision in *Capron* concluded that Federal au pair regulations do not, as currently written, preempt state and local law, and this has led to a great deal of confusion among au pair sponsor organizations, au pairs, host families, and state/local governments about the relationship between the Federal au pair regulations and state and local law. Indeed, this ruling has caused an immediate negative impact on the au pair program. Families inviting an au pair into their home to share a cultural exchange experience incur significant personal and financial burdens; predictable program requirements are necessary for families to make this decision. Uncertainty about whether Federal or State/local law requirements apply, or how these provisions apply simultaneously, has made it extremely difficult for the families to anticipate their responsibilities, costs, administrative burdens, and ultimately their ability to host an au pair. The proliferation of additional lawsuits concerning the au pair program in the wake of the *Capron* decision has only added to this uncertainty. In addition, families that were adhering to the Federal regulations in good faith may now find themselves accused of violating state and local laws and facing legal exposure.

In addition to the minimum wage issue discussed above, the proposed rule would clarify the calculation of the room and board deduction under the FLSA. The requirements that an au pair live with an American host family and participate directly in home life, and the availability of the deduction to the host family, are key features of the au pair program because they facilitate the au pair's participation in daily family life, entertainment, and meals. Similarly, in order to help build strong relationships with their American host families, au pairs are not permitted under the au pair regulations to provide child care for multiple families (proposed in paragraph (e)(1)(v)) or work for any other employer, whereas states/localities may permit a domestic worker to work for multiple employers. The Federal regulations for the au pair program offer other nationwide benefits and protections to au pairs including the requirement that au pairs be given certain time off and two weeks of paid time off.

Under the First Circuit ruling in *Capron,* it is unclear to host families what obligations they have that extend beyond those provided in the current au pair regulations. As a result, sponsors have reported a decrease in prospective host families interested in participating in the program. One sponsor notified the Department of State that they no longer would place au pairs or run their exchange program in the state of Massachusetts. Data from the SEVIS reports that there were 1,457 au pairs placed in Massachusetts in 2019. The number of au pairs has declined each year since the ruling. In 2021 and 2022, there were 528 and 454 au pairs respectively placed in Massachusetts. The prospect of litigation in other jurisdictions and interest in new state and local law measures to regulate the

terms of au pair employment has dramatically increased. The Department of State believes it is urgent to bring clarity to this issue by promulgating this rulemaking, and thereby preserving a nationwide approach to the au pair program and facilitating a cultural exchange program experience that meets U.S. foreign policy objectives.

Severability

The Department of State proposes to include a severability clause in § 62.31(u), such that if any provision is held invalid or unenforceable, it would not affect the remainder of the rule. The Department of State believes that the provisions of this rulemaking are necessary to further the foreign affairs and diplomacy purposes of the Fulbright-Hays Act. To the extent that any provision is held invalid or unenforceable, the Department of State intends for the remaining provisions to continue to operate and protect au pairs, sponsors, and other stakeholders in the au pair program.

Proposed § 62.31(u) would establish that in the event that any provision of this section is held invalid as applied to any person or circumstance, the Department of State intends for such provision to be construed to have maximum effect as applied to other persons or circumstances to the extent permitted under law. If such provision is deemed invalid and unenforceable in any circumstance, the Department of State intends for such provision to be severable from the remaining provisions of this section.

Reliance Interests

The Department of State recognizes that sponsors, host families, au pairs, and their communities may have reliance interests of varying degrees in the current au pair program. The Department of State understands that sponsors may have relied upon the current regulations in deciding to seek designation to conduct exchange programs; in hiring staff and recruiting potential exchange visitors; and in making other business choices. Au pair sponsors invest a significant amount of time and resources into recruiting and selecting host families and au pairs. Any sudden changes to the program regulations could disrupt this investment and cause significant uncertainty and stress for sponsors, host families, and au pairs. The Department of State is aware that this rulemaking may decrease the number of au pairs participating in sponsor programs, but the Department believes that the benefits of reducing confusion about the relationship between the Federal au pair regulations and state and local law will help to increase participation. Further, the rulemaking includes a number of safeguards for au pairs and host families that may also increase participation and ultimately benefit sponsors. Nonetheless, as discussed below, the Department of State proposes to delay the effective date of the final rule for approximately six months to allow sponsors time to reevaluate their programs before the new regulations go into effect.

The Department of State has also considered the effect of this proposed rule on families that are currently hosting au pairs. Host families may have decided to participate in an exchange program under the existing rules and unexpectedly face new costs if subject to the new regulations immediately. The effects on host families will include paying more than twice as much in au pair compensation as they currently do in some localities. In consideration of these reliance interests, the Department of State proposes to ''grandfather'' au pairs (and their host families) on exchange programs that began prior to the final rule's effective date, (*i.e.,* 180 days from publication of the final rule). Such exchange programs will not be subject to the new rules for the duration of the initial one-year program, or for up to one year if the au pair is currently on an extension. Current host families that intended to extend participation of their current au pair will be subject to the new regulations 180 days after publication of the final rule. Some host families may choose not to extend their au pair's program as a result. The Department of State nonetheless believes the benefits of greater protections for au pairs and host families will lead to an improvement in the public diplomacy benefits of the program. The Department of State requests comments on its consideration of the reliance interests of stakeholders.

Implementation. Given the significant impact the proposed rule will have on host families and au pairs that have already signed a Host Family Agreement, the Department of State proposes to ''grandfather'' certain au pair programs that begin prior to the effective date of 180 days from date of publication of the final rule. If the Department finalizes all or part of this proposal, au pair exchange programs with a Program Begin Date on the DS–2019 prior to 180 days from date of publication of the final rule are subject to the requirements of 22 CFR 62.31 in effect at the time of the Program Begin Date on Form DS–2019. Any extensions of programs authorized prior to the effective date of 180 days from date of publication of the final rule are also subject to the requirements of 22 CFR 62.31 in effect at the time of the Program Begin Date. Any program extensions authorized on or after the effective date of 180 days from date of publication of the final rule would be subject to the requirements set forth in this section.

The Department of State also seeks comment on its proposal to delay the effective date of the final rule for 180 days upon publication of a final rule; as well as comment on any provisions of proposed § 62.31 that should be implemented sooner, (*e.g.,* within 30 days of publication). By delaying implementation of certain requirements for approximately six months, sponsors would have time to adjust and plan for any changes that may affect their programs. Secondly, delaying the implementation of some regulatory provisions in new au pair regulations for approximately six months would provide sponsors with an opportunity to evaluate the impact of the proposed changes on their own exchange programs. This time would allow sponsors to make any necessary adjustments or changes to their program models to ensure compliance with the new regulations. Finally, delaying implementation of the new au pair regulations for approximately six months would ensure that current and future au pairs have a clear understanding of the program requirements and expectations, and that sponsors have time to communicate these changes effectively to host families and au pairs. This temporary delay would help to minimize confusion and ensure that the au pair program continues to provide high-quality child care and educational and cultural exchange experiences for families and au pairs alike.

Summary of NPRM

In summary, the Department of State would modernize the au pair program and increase au pair protections by proposing the following new provisions:

Section 62.31(a). The purpose paragraph introduces a part-time program (24–31 hours of child care per week) and a full-time program (32–40 hours per week).

Section 62.31(c). As part of the program conditions, sponsors would be required to establish new standard operating procedures.

Section 62.31(d). The au pair eligibility paragraph would require sponsors to ensure that au pairs are interviewed by both the sponsor and the host family. Au pairs would also be required to have a driver's license from their home country to demonstrate at

least one year of experience driving and be able to obtain a license in the host family jurisdiction, if required.

Section 62.31(e). Sponsors would be required to confirm a host family placement prior to the au pair's departure from the home country by obtaining the signatures of the host family and au pair in a Host Family Agreement.

Section 62.31(f). The au pair orientation provision would require sponsors to provide au pairs with pre-arrival information that covers compensation and benefits (including in-kind benefits); allowable deductions; maximum work hours; time off; child care duties; documenting child care hours; driving expectations; and, requirements for paying state and Federal taxes.

Section 62.31(g). The au pair training paragraph requires sponsors to provide au pairs with child safety instruction and child development instruction, an online driving course, and information covering state and local driving laws including safety information.

Section 62.31(h). The host family eligibility paragraph requires sponsors to ensure that host families are prepared to speak English daily and will not reside outside the U.S. for more than 30 days. Sponsors must also conduct criminal background checks on all host family household members 18 years of age or older.

Section 62.31(i). The host family orientation provision would require sponsors to provide host families a copy of the Host Family Agreement, information on how to document weekly child care hours, and a print-out of the current page from the Internal Revenue Service's website on the topic of ''Taxation of Nonresident Aliens.''

Section 62.31(j). This paragraph would formalize the current au pair and host family agreement and require both the au pair and host family to sign prior to the au pair departing from their home country, as well as identify an itemized list of fees (costs to host family and au pair); duties; weekly schedule; compensation; time off for weekends and vacation; educational component; room; in-kind benefits (*e.g.,* cell phone, gym membership, car for personal use); and, appropriate and inappropriate au pair duties.

Section 62.31(k). ''Au pair limitations and protections'' is a new provision under which sponsors would require host families to provide a home environment free from sexual harassment, exploitation, or any other form of abuse; to not use a nanny cam or take photos without prior and ongoing consent; to ensure the au pair is only responsible for the host family children; and, to provide the au pair 80 hours of paid time off and 56 hours of sick leave.

Section 62.31(l). Rematch would require sponsors to report when an au pair is removed from the host family home, determine the au pair suitability to continue the program, and make an expedient, fair and good faith effort to find a new host family placement for suitable au pairs. Sponsors would be required to refund au pairs if unable to find a suitable rematch.

Section 62.31(m). The ''Hours'' paragraph would require whether the au pair will be participating in a part-time or full-time program to be stated in the Host Family Agreement, prohibit overtime for child care except in limited exigent circumstances, and define when an au pair is providing child care.

Section 62.31(n). The compensation provision would introduce a new four-tiered compensation chart based on the highest of the Federal, State, and local minimum wage. It further explains that au pairs would be compensated for the maximum number of hours in the part-time or full-time program and the extent to which deductions are permissible for room & board and in-kind benefits.

Section 62.31(o). The educational component provision would be amended to eliminate the Educare program and offer new options in conjunction with in-person classes (*e.g.,* online class, continuing education classes, and volunteering in their community).

Section 62.31(r). The reporting requirements paragraph would add new requirements for sponsors to provide foreign agent information and price lists and an annual itemized program costs/fees list.

Section 62.31(t). ''Relationship to state and local laws'' is a new provision that would provide that regulations in this section provide the exclusive requirements in certain matters and may not be supplemented by state or local law except as expressly provided therein.

Regulatory Analysis

Administrative Procedure Act

The Department of State has historically determined that rulemakings regarding the Exchange Visitor Program involve a foreign affairs function (5 U.S.C. 553(a)) of the United States.[4] However, due to Department of State's interest in seeking public comment on this rulemaking, the Department is soliciting comments during a 60-day comment period, to which it will respond in a final rule, should the Department of State choose to finalize all or part of this proposal.

Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. Further, since the regulatory requirements in the proposed rule will not significantly or uniquely affect small governments, no further action by the Department of State is required under the Unfunded Mandates Reform Act of 1995.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department of State has determined that this regulation will not have Tribal implications, will not impose substantial direct compliance costs on Indian Tribal governments, and will not preempt Tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Regulatory Flexibility Act/Executive Order 13272: Small Business Impacts

As noted above in the APA section, the Department of State has historically determined that rulemakings regarding the Exchange Visitor Program involve a foreign affairs function (5 U.S.C. 553(a)) of the United States. The Department of State voluntarily provides the following information regarding the proposed rule's impact on small businesses.

This regulation will affect the operations of fourteen sponsors designated by the Department of State to conduct exchange programs in the Au pair category. Each organization applied to the Department of State to become a designated sponsor of the au pair program, and as part of the ongoing administration, sponsors supply their latest financial year end statements every two years as part of an application for redesignation. Of the fourteen

[4] Foreign governments seek to promote the ability of their foreign nationals to visit and study in the United States, and the Department of State establishes modified exchange programs pursuant to memoranda of understanding with foreign governments, based on the foreign policy needs of the United States. This practice reflects the flexibility needed for a program whose purpose is to promote the interests of the United States abroad and further ''peaceful relations between the United States and the other countries of the world.'' 22 U.S.C. 2451. In connection with that purpose, a major purpose of this rulemaking is to protect the health, safety, and welfare of foreign nationals while they are in the United States on their programs. Failure to protect the health, safety and welfare of these foreign nationals can have direct and substantial adverse effects on the foreign affairs of the United States.

sponsors designated in the Au pair category of the Exchange Visitor Program in 2019, all were small sponsors with annual revenues from the J-visa au pair program of approximately $15 million or less. In one recent year, 21,500 foreign nationals started new programs in the Au pair category. As the au pair program is currently under a new sponsor moratorium and a cap on the number of au pairs annually, we expect a similar number of au pairs to begin 12-month long exchange programs in the coming years.

Many variable costs do not have a significant impact on small entities because they are proportionate to the sponsors' program size, and thus, revenues. For example, one au pair sponsor only sponsors six au pairs annually and the largest sponsor hosts approximately 10,500 au pairs annually.

Sponsors will incur the following range of costs:

- *Customize the Host Family Agreement for each au pair placement.* The cost to input the host family specific information into a contract would take one employee one hour at a cost of $72.97 per placement × 21,500 au pair placement = a total aggregate cost of $1,568,855. The estimated range of costs for sponsors is $438 for the sponsor with the smallest program to $766,185 for the sponsor with the largest program.
- *Prepare placement-specific information packages for au pairs and host families.* The Department of State believes that a GS–9 level staff member could compile, collect, and distribute electronically the required information in one hour per placement, or $31.50. For all 21,500 placements, the aggregate cost would be $677,250. The estimated range of costs for sponsors is $189 for the sponsor with the smallest program to $330,750 for the sponsor with the largest program.
- *Vet foreign entity contracts.* The Department of State estimates that it will require sponsor staff at the GS–9 level two hours to vet each foreign entity for a total of $71.62 per foreign entity. These costs will vary significantly among sponsors, based upon their recruiting patterns. The cost to the sponsor with one foreign entity will be $71.62. The cost to the sponsor with 51 foreign entities will be $3,652.62. For the entire sponsor community, it will cost $27,000.74 to annually vet all 377 foreign entities.
- Updating standard operating procedures to include the new requirements under program conditions—to update the seven standard operating procedures by one employee at $72.97 per hour, it would cost each sponsor $4,086 to formalize these standard operating procedures. The total cost for all sponsors would be $57,208.
- *Updating the existing host family and foreign entity contract templates.* It would take one employee at $72.97 per hour a total of 22 hours for a total of $1,605 per template.
- *Updating sponsor orientation materials one-time based on new regulatory requirements.* These additional fixed costs would take one employee at $72.97 per hour a total of 40 hours for a total of $2,919.

Alternatives Considered. The Department of State considered not issuing a proposed rule, but small entities (*i.e.,* sponsors) themselves have asked the Department of State for regulatory clarification about how the Federal regulation interacts with state and local law. The confusion currently created in the au pair program, once eliminated, may reduce costs for sponsors because they can make better business decisions about operations.

The au pair regulations have not been updated since 2008, and there were several program administrative areas, such as au pair protections and increased educational stipends, that needed to be updated to modernize the au pair program and ensure that the program meets the purposes of the Exchange Visitor Program.

Executive Order 12866

The Department of State has submitted this proposed rule to the Office of Information and Regulatory Affairs (OIRA), and OIRA has determined that this is an economically significant regulatory action per Executive Order 12866.

The Department of State asserts that the foreign policy benefits from preserving this nationwide au pair program, providing for the safety of au pairs, and ensuring accountability of all stakeholders in the au pair program outweigh any additional costs imposed by this rulemaking. This section outlines new costs for the program. The costs of the new regulations are comprised of fixed and variable costs.

For the cost calculations, the Department of State uses the hourly wage of mid-range GS–9 Federal workers for support services and the hourly wage of mid-range GS–14 Federal workers for those tasks requiring additional experience, such as writing standard operating procedures. The Department of State adds 40% of the GS–9 hourly wage to the base rate to include the cost of benefits (or $22.50 × 140% = $31.50). Similarly, the Department of State calculates the GS–14 hourly wage as $52.12 + $20.85 = $72.97.

Fixed Costs

This regulation will impose total estimated new fixed costs of $8,610 for each of the fourteen designated au pair sponsors, or $120,540 in the aggregate. The Department of State estimates the size of the programs of the fourteen sponsors ranges from six exchange visitors to 10,500 exchange visitors starting new programs each year. The Department of State does not calculate additional costs to host families for au pairs who extend their programs as extending au pairs remain with their host families and most of the variable costs are associated with evaluating the suitability of the original au pair placement. The fixed costs are those that each sponsor must incur regardless of program size. Almost half the fixed costs will be incurred formalizing the seven standard operating procedures: (i) training of headquarters and field staff; (ii) contingency plans for au pairs removed from a host family; (iii) covering educational costs that host families fail to pay; (iv) allocation of non-income related cost of paid time off and sick leave; (v) rematching qualified au pairs to new placements; (vi) establish guidelines and circumstances for au pair to be removed from program; and (vii) process for responding and reporting to issues, concerns, or emergencies. As discussed below under ''Program conditions'', to update the seven standard operating procedures by one employee at $72.97 per hour, it would cost each sponsor $4,086 to formalize these standard operating procedures. The total cost for all sponsors would be $57,208.

Other fixed costs include updating existing host family and foreign entity contracts, as well as updating sponsor orientation materials. These additional fixed costs would take one employee at $72.97 per hour a total of 22 hours for a total of $1,605 per template and 40 hours to update orientation templates for a total of $2,919. Total fixed costs are $4,086 + $4,524 = $8,610 per sponsor, or $120,540 for all fourteen sponsors.

Variable Costs

The Department of State estimates that the variable costs for sponsors per au pair placement will increase by $195. This includes the costs of criminal background checks for each adult in the host family home (average two per home) and to customize the Host Family Agreement and orientation materials for each placement. In the aggregate, the Department of State estimates variable costs to be $2,047,500 (10,500 au pairs

× $195) for the largest sponsor. These costs do not have a significant impact on small entities because they are proportionate to the sponsors' program size, and thus, revenues. Sponsors will incur costs to customize Host Family Agreements to individual placements and to prepare placement-specific information packages for au pairs and host families. The smallest sponsor with six au pairs will have a variable cost of $1,170 (6 au pairs × $195). Another variable cost is associated with the need for sponsors to customize agreements with foreign entities and to vet them according to the new requirements. As a general matter, smaller sponsors utilize fewer foreign entities because they tend to recruit from fewer foreign countries.

Host families would incur variable costs depending on the days needed per week to document hours of child care, with a maximum cost of $409.50 per host family annually, or aggregate costs of $8,804,250 (15 minutes per week to fill out a timesheet for an estimated cost of (15 minutes per week × 52 weeks = 13 hours × $31.50 = $409.50, or an aggregate of $409.50 × 21,500 host families = $8,804,250).

Sponsor and host family new costs and transfers under this rulemaking are detailed as follows:

Purpose (§ 62.31(a)). There are no new costs associated with this provision.

Program designation (§ 62.31(b)). There are no new costs associated with this provision.

Program conditions (§ 62.31(c)). This new paragraph on program conditions requires sponsors to formalize standard operating procedures and internal controls (to confirm the effectiveness of the procedures) that already should be part of their operations. For example, sponsors already assess whether they have sufficient resources to train headquarters and field staff to ensure regulatory compliance and the health, safety, and welfare of exchange visitors and the children in au pairs' care. They also already deal with the complications that arise when irreconcilable differences require au pairs to be removed from their current host family homes, such as the following: (1) ensuring the safety of au pairs who are awaiting rematches (and no longer live with a host family); (2) allocating among host families the funding of the educational component and non-cash benefits (*i.e.,* paid time off and sick leave) when rematches occur; (3) specifying the steps for rematching au pairs, including ending programs of otherwise qualified au pairs; (4) identifying criteria determining whether au pairs are qualified for rematch; and (5) placement-related issues. It is estimated that formalizing each standard operating procedure would take a GS–14, Step 5 equivalent staff person eight hours, for a total of 56 hours for all seven procedures. At $72.97 per hour it would cost each sponsor $4,086 to formalize these standard operating procedures. The total cost for all sponsors would be $57,208.

The regulations at § 62.31(c)(3) would establish a new requirement that sponsors annually vet and enter into contracts with foreign third parties that act on their behalf in the operation of their exchange programs. Since the regulations already impute to sponsors non-compliance by third parties acting on their behalf, it is likely that sponsors already vet foreign entities to ensure their suitability. They also are already required to enter into contracts with them. However, the Department of State is seeking public comment on these costs.

In 2021, the size of the fourteen au pair programs ranged from five to nearly 10,500 exchange visitors. The number of foreign entities these sponsors utilized ranged from one to 51. Generally, the number of foreign countries from which sponsors recruit exchange visitors increases as the number of total exchange visitors increases. Three of the fourteen sponsors, however, do not follow that pattern, (*i.e.,* they recruit small numbers from multiple countries), resulting in a higher costs per exchange visitor than those sponsors who cluster their recruitment. The cost, however, is minimal.

The Department of State anticipates that sponsors will update their standard foreign entity contracts to ensure they conform with current regulations. Estimating four hours per contract attorney at $100 per hour, it will cost each sponsor $400 to update their current contracts.

The Department of State estimates that it will require sponsor staff at the GS–9 level two hours to vet each foreign entity for a total of $71.62 per foreign entity. These costs will vary significantly among sponsors, based upon their recruiting patterns. The cost to the sponsor with one foreign entity will be $71.62. The cost to the sponsor with 51 foreign entities will be $3,652.62. For the entire sponsor community, it will cost $27,000.74 to annually vet all 377 foreign entities.

Au pair program eligibility and suitability (§ 62.31(d)). Sponsors already must evaluate the eligibility and suitability of au pair program candidates. The slight changes in the information they must gather is insignificant as sponsors likely routinely update such checklists.

Au pair placement (§ 62.31(e)). There are two primary clarifying regulatory changes to this paragraph. First, sponsors must evaluate the personal space of au pairs in the potential host family homes. The Department of State believes that sponsors already tour a potential host family home for a private bedroom when they interview the families, therefore the clarifying requirement of evaluating personal space will result in no additional cost to any party. Second, the current regulations set forth at 22 CFR 62.31(e)(5) already require sponsors to provide au pairs with information about the prospective host families and their schedules in a written agreement; and sponsors must provide host families with the au pairs' applications. The Department of State believes that a GS–9 level staff member could compile, collect, and distribute electronically the required information in one hour per placement, or $31.50. For all 21,500 placements, the aggregate cost would be $677,250. It would cost the smallest sponsor that brings in five au pairs annually $157.50. It would cost the largest sponsor that brings in 10,500 au pairs $330,750.

Au pair orientation (§ 62.31(f)). The regulations update the requirements for the existing pre-departure orientation. Sponsors most likely routinely reevaluate their orientation materials, so the cost of these minor changes is insignificant. However, there would be a new requirement for a post-arrival orientation. Sponsors already meet with new au pairs and provide them introductory information based on the current regulatory requirements at 22 CFR 62.10(c). Since the proposed regulation identifies certain required topics, however, there will be a cost associated with incorporating the new provisions into standard sponsor materials. The Department of State estimates these new requirements can be completed in eight hours by a staff member at the GS–14 level. $72.97 per hour × 8 hours = $583.76 per sponsor or $8,172.64 for all fourteen sponsors.

Au pair training (§ 62.31(g)). The new regulations do not modify the current au pair training requirements except that au pairs who will be required to drive must take on-line or in-person classes to become familiar with U.S. driving customs and safety. Sponsors also must provide au pairs with jurisdictionally-specific driving regulations. Since this information is readily available online, the Department of State believes this new requirement will not have a substantial cost. The Department

estimates online driving courses cost will vary, for example, from $12 in California [5] to $45 in New York.[6]

Host family selection (§ 62.31(h)). Requiring criminal background checks for adult members living in the host family home is a new requirement. It is likely that there are at most two adults living in most homes. County criminal history searches are the most common form of criminal background check. The Department estimates a county court criminal background check will cost $15–$20, and a statewide criminal background check will cost $10–$20. This type of report typically includes address history, age, misdemeanors, felonies, offense date, case number, arrest history, and offense description.[7] This is a variable cost that sponsors can pass through to the host families. If sponsors chose not to pass through the cost, the cost to sponsors is calculated as follows: Assuming an average cost of $20 per background check, the additional cost would be $40 per placement. With 21,500 au pairs, the aggregate cost would be $860,000. Since this is a variable cost, it will not have a significant impact on smaller sponsors.

Host family orientation (§ 62.31(i)). Sponsors will incur a cost to prepare materials to reflect new orientation requirements and to train field staff on conducting the sessions. The Department of State estimates that preparation of these materials could take 16 hours by a staff member at the GS–9 level combined with eight hours by a staff member at the GS–14 level: ($31.50/hr × 16 hr) + ($72.97/hr × 8 hr) = $1,087.76 per sponsor. The Department of State estimates that training materials could be developed in eight hours by a staff member at the GS–9 level combined with four hours by a staff member at the GS–14 level, for a total of $578.36. Together, the development of orientation and training materials could cost $1,666.12 per sponsor, or $23,325.68 for all 14 sponsors.

Host Family Agreement (§ 62.31(j)). Sponsors must confirm au pair/host family placements by obtaining the signatures of both host families and au pairs on a Host Family Agreement prior to au pairs' departure from their home countries. This rulemaking requires sponsors to update their current agreements by including both new required general information and placement-specific information. An average hourly fee for a contract attorney is $50, and the Department of State doubles this rate to account for the location of sponsor organization in higher cost areas. The Department of State estimates contract attorneys could modify existing Host Family Agreements in 16 hours, for a non-recurring cost per sponsor of $1,600 for drafting initial agreements, or $22,400 in the aggregate. Once sponsors engage counsel to update their Host Family Agreements to include the new required information, they will need to customize the agreements for each new placement. The Department of State estimates sponsors will spend two hours. It is estimated that customizing the agreements and obtaining required signatures would take a GS–9 Step 5 equivalent staff person two hours, for a total of $63.00 per placement. The aggregate cost for the 14 sponsors and estimating 21,500 new au pairs each year is estimated to be $1,354,500 per year. Of course, each sponsor's portion of this total is driven by their program sizes, with the least impact falling on small sponsors.

Au pair limitations and protections (§ 62.31(k)). It is unknown whether host families will incur additional costs by having to obtain alternative child care when au pairs are using paid time off or sick leave. They may incur additional costs if their child care needs exceed program maximum hours each week. The costs incurred for exigent circumstances that require overtime are discussed below under ''Hours''. Costs to host families for one-off days are unknown as host families may have family members or alternative caregivers who can provide child care if the au pair is on sick leave. The Department of State seeks comment on these potential costs.

Rematch (§ 62.31(l)). The Department of State has implemented a new refund requirement for sponsors who are unable to rematch au pairs who are eligible to continue on program if their first host family matches are not successful. This new requirement is designed both to provide a greater incentive for sponsors to make good initial matches and to provide an additional protection for au pairs who, through no fault of their own, are unable to continue on the program. Sponsors that are unable to find alternative host families for au pairs that are deemed qualified for rematching (*i.e.,* the rematch was required through no fault of the au pairs) may face significant costs. The new regulation requires sponsors to refund au pairs who are qualified for rematch, but for whom their sponsors are unable to find new suitable host families. Refunds range from 25 percent to 75 percent of all fees au pairs paid to both sponsors and foreign third parties, depending upon the proportion of the duration of the program the au pairs were able to complete. Because qualified au pairs who are awaiting a rematch will continue to need room and board even though they are not being paid for child care, the new regulations also require sponsors to ensure that au pairs have lodging and food during this transition period.

The Department is seeking public comment on what specific costs sponsors are likely to incur in the event of a rematch.

Hours (§ 62.31(m)). Sponsors must collect documentation from host families that records the weekly hours and leave of au pairs. The Department of State estimates it will take each sponsor two hours to design the form for collection of this data. Each sponsor will incur the fixed cost of $63, with the aggregate cost for all sponsors being $882. The Department of State estimates no additional time to collect such documentation, as the collection can be part of the monthly monitoring process.

Host families would be required to document the weekly hours of the au pair. The Department of State estimates it will take each host family no more than 15 minutes per week to fill out a timesheet for an estimated cost of: 15 minutes × 52 weeks = 13 hours × $31.50 = $409.50, or an aggregate of $409.50 × 21,500 host families = $8,804,250.

Au pairs would not be permitted to provide more than 40 hours of child care per week, except when requested, approved, and documented through the sponsor. If host families need infrequent exceptions and ask the au pair to work overtime, host families would be required to pay overtime rates to the au pair and notify the sponsor in writing. The overtime rate must include any overtime premium due under applicable Federal, state, or local law for the host family jurisdiction. This cost varies per jurisdiction.

Compensation (§ 62.31(n)). The proposed regulations will require some host families to pay a significantly higher wage than the Federal minimum wage that is currently required. Some host families already do pay higher compensation based on the skill level of the au pair or to cover higher living

[5] *See https://www.driverseddirect.com/california-online-drivers-ed.aspx?ProductID=33&STATE=CA&DC=wow27off&hc=A&source=GOOGLE_DE-NEWBTW_03242022RSAMAXPIN_HCA_DCwow27off&gclid=EAIaIQobChMIifLO5bCg_gIVTBbUAR0VGwS5EAAYAiAAEgJYkvD_BwE.*

[6] *See https://www.idrivesafely.com/new-york/5-hour-pre-licensing-online.*

[7] *See https://www.criminalwatchdog.com/faq/how-much-does-background-check-cost; https://www.sentrylink.com/web/criminal-check.action?gclid=EAIaIQobChMIt_zk5MWL_gIVK__jBx0lYQmgEAAYASAAEgIsNfD_BwE.*

expenses. Host families under the current regulations pay an estimated $10,140 ($195 a week × 52 weeks) to $15,000 annually in compensation per au pair per year across the United States. This does not include program fees and other in-kind benefits which are additional expenses to host families.

The proposed annual host family compensation increase in transfers are determined based on the four-tiered wage formula. After subtracting the maximum for meal and lodging credits of $6,790, (assuming that the deduction is permissible each day and week of the year), host families would pay an annual estimate based on the following tiered levels per au pair: Tier 1—$9,850.00 (40 hours/week × 52 weeks = 2,080 hours at $8/hour = $16,640 − $67,906,790 meals/lodging = $9,850), Tier 2—$18,170.00, Tier 3—$24,410.00, and Tier 4—$30,650.00. Any overtime expenses for exigent circumstances are discussed below under hours.

Currently only two states, California and Washington, and the cities of Washington, District of Columbia, and Denver, Colorado, would fall under Tier 4. There are currently 2,947 au pairs in California, 1,141 au pairs in Washington, 378 in the District of Columbia, and 260 in Denver, Colorado identified as Tier 4, or a total of 4,726 au pairs out of the annual estimated 21,500 au pairs—or an estimated 22% (4,726/21,500) of au pairs living in Tier 4. Therefore, the total compensation *increase* for Tier 4 is: ($30,650 (the proposed wage) −$10,140 (the current wage) = $20,510 × 4,726 (22% of 21,500) = $96,930,260 million increase for Tier 4 au pairs.

For a sampling of Tier 3, we are using an estimate of 25 percent of au pairs that fall within this tier. The transfer payment would be for 5,375 au pairs out of 21,500 and an *increase* of $24,410 − $10,140 (the current wage) = $14,270 × 5,375 = $76,701,250.

For a sampling of Tier 2, we are using an estimate of 25 percent of au pairs that fall within this tier. The transfer payment would be for 5,375 au pairs out of 21,500 and an *increase* of $18,170 − $10,140 (the current wage) = $8,030 × 5,375 = $43,161,250.

There are a number of states in which the Federal minimum wage is still equal to the highest applicable wage and any increase would be minimal as a result of this rulemaking. As an estimate, 28 percent of au pairs identified may fall in Tier 1, or a total of 6,024 au pairs out of 21,500) of au pairs living in Tier 1 would lead to a transfer decrease from host families of $9,850 − 10,140 (current wage for 45 hours per week) = −$−290 × 28% of 21,500 = $−1,746,960.

Therefore, the total increase in transfers from host families to au pairs is estimated to be $215,045,800 (sum of the four tiers' transfers).

Educational component (§ 62.31(o)). The educational stipend of $500 for an au pair to take college level classes has not been updated since 1993. Sponsors have always been responsible for tracking whether host families pay the educational stipend and that au pairs complete the required coursework and/or community service. There is no additional cost for sponsors as a result of the rule change. However, sponsors will require host families, to pay a higher educational stipend of $1,200, an increase of $700 than currently required. The increased cost to 21,500 host families × $700 increase would be $15,050,000.

Monitoring (§ 62.31(p)). Sponsors already must monitor their au pair placements. There is no significant change to the monitoring provisions that would result in any significant cost increase for sponsors.

Duration and extensions (§ 62.31(q)). The new regulation does not impose any new requirements.

Reporting requirements (§ 62.31(r)). There are two changes to the current reporting requirements. First, sponsors must submit annually the following current schedules: a listing of all fees they may charge au pair applicants/participants to participate in the program and listings on a country-specific basis of all fees foreign third parties acting on their behalf may charge au pair applicants/participants to participate in the program. In support of these listings, sponsors must provide website links to both the sponsors' and all their foreign entities' websites on which such fees are posted. Additionally, sponsors must inform the Department of State of any changes in the identity of or information about the foreign entities they engage to assist in their programs. The Department of State presumes that both sponsors and foreign entities already maintain such fee schedules and that there is little churn in the identity of the third parties with which sponsors work. Accordingly, the Department of State estimates that the cost of complying with these new requirements is de minimis.

Repeat participation (§ 62.31(s)). The new regulation does not impose any new requirements. The Department of State asserts that the foreign policy benefits from preserving a nationwide au pair program, providing for the safety of au pairs, and ensuring accountability of all stakeholders in the au pair program outweigh any additional costs imposed by this rulemaking.

Summary of Benefits, Costs and Transfers

To summarize, the annual increase in transfers from host families to au pairs is estimated to be $230,095,800 (sum of the four tiers' transfers plus increased educational expenses). One-time costs are estimated to be $142,940, and recurring annual costs are estimated to be $15,923,673, of which $8.9 million are paperwork burden costs incurred by the program's 21,500 host families. The primary benefits of this rulemaking are reduced confusion about the relationship between the Federal au pair regulations and state and local law, which will help to increase participation; a number of safeguards for au pairs and host families that may also increase participation and ultimately benefit sponsors; and, preserving a nationwide program that advances the foreign policy objectives of the Exchange Visitor Program.

The Department of State notes that the increased costs and transfers, especially associated with compensation and educational expenses, could result in a decline in host families in the au pair program. Host families in regions with higher minimum wage rates may seek alternative child care options if the compensation costs outweigh the benefit of a cultural exchange program for their family. This may also result in a reduction of au pairs annually coming to the United States on a J visa. The Department of State requests comment on the extent to which these increased costs and transfers may deter host families from participating in the au pair program.

The Department of State has chosen to analyze the impact of this proposed rule over a five-year time horizon. While this proposed regulation stipulates that the Department of State will update the hourly pay rates in the four-tiered au pair compensation chart in response to changing economic conditions not less than every three years, the Department is unable to forecast economic conditions at this time, and therefore assumes that the compensation tiers will remain the same for at least the next five years. The Department of State is requesting comment on this assumption. The below table outlines the total discounted (at 3% and 7%) and annualized costs and transfers over the analytic period:

	Year 1	Year 2	Year 3	Year 4	Year 5
Annual Costs	$16,066,613	$15,923,673	$15,923,673	$15,923,673	$15,923,673
Annual Transfers	230,095,800	230,095,800	230,095,800	230,095,800	230,095,800
Total Costs (3%)	73,064,536	Annualized (3%)	15,953,975		
Total Transfers (3%)	1,053,771,389	Annualized (3%)	230,095,800		
Total Costs (7%)	65,423,792	Annualized (7%)	15,956,254		
Total Transfers (7%)	943,438,209	Annualized (7%)	230,095,800		

Executive Order 12988

The Department of State has reviewed this rulemaking in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burdens.

Executive Orders 12372 and 13132—Federalism

A rule has federalism implications under Executive Order 13132 if, *inter alia,* it has ''substantial direct effects on the distribution of power and responsibilities among municipalities, states, and the federal government.'' 64 FR 43244. While this proposed rule memorializes the Department of State's view of the distribution of power and responsibilities in this area, the Department of State recognizes that section 4 of Executive Order 13132 specifically provides for notice and an opportunity to participate for affected State and local officials. Accordingly, even though the Department of State does not believe that it is required to consult with states or local governments under Executive Order 13132 because the proposed rule does not alter the basic State-Federal scheme established under the statutes that created the Exchange Visitor Program, the Department of State welcomes comments on this proposed rulemaking from state and local governments, in order to improve the administration of the au pair program and to maximize stakeholder input. Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities does not apply to this regulation.

Paperwork Reduction Act

The Department of State submitted to the Office of Management and Budget (OMB), for review and approval, the reporting and recordkeeping requirements inherent in this rulemaking. This proposed rule requires new collection of information by sponsors.

The information collection requirements contained in this proposed rule are described pursuant to the Paperwork Reduction Act and OMB Control Number 1405–0147, Form DS–7000, which requires collection of additional information for the Exchange Visitor Program. As part of this rulemaking, the Department of State is seeking comment on the administrative burden associated with modifying the collection of information.

This is an expansion of an information collection utilized by the Bureau of Educational and Cultural Affairs in its administration and program oversight of the Exchange Visitor Program (J-Visa) under the provisions of the Mutual Educational and Cultural Exchange Act, as amended.

(1) *Type of Information Collection:* Revision.

(2) *Title of the Form/Collection:* Recording, Reporting, and Data Collection Requirements under 22 CFR part 62.

(3) *Agency form number:* DS–7000.

(4) *Affected public:* This information collection will require recordkeeping, disclosures to host families, and reporting by designated sponsors.

(5) Change to information collected by the Department of State: The Department of State is proposing changes to recordkeeping and reporting requirements for sponsors:

- Sponsors will update each host family agreement to include required disclosures between the exchange visitor and host family (proposed 62.31(j)).
- Sponsors will require host families to document actual hours worked by the au pair and provide those records to the sponsor (proposed 62.31(m)). Host families would be required to document the weekly hours of the au pair in a timesheet.
- Sponsors will report new information to the Department of State annually, including: a listing of all fees they may charge au pair applicants/participants to participate in the program and listings on a country-specific basis of all fees foreign third parties acting on their behalf may charge au pair applicants/participants to participate in the program. In support of these listings, sponsors must provide website links to both the sponsors' and all their foreign entities' websites on which such fees are posted (proposed 62.31(r)).
- Sponsors will maintain records of business license, bankruptcy, previous experience, and notarized recent financial statements for overseas third parties (proposed 62.31(c)(3)(ii)).
- Sponsors must conduct and document a host family orientation session for all adult family members. Sponsors must provide to the host family copies of the signed and dated Host Family Agreement, the Department of State's Exchange Visitor Program regulations, brochures, and advisory letters regarding the au pair program, and a print-out of the current page from the Internal Revenue Service's website on the topic of ''Taxation of Nonresident Aliens'' (proposed 62.31(i)).

(6) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The total number of respondents for the au pair are the fourteen organizations designated by the Department of State at the time of this rulemaking to conduct the au pair exchange program activities. The estimated hour burden per response for preparing the host family agreement (62.31(j)) is 2 hours. The estimated hour burden per response for documenting the au pair child care hours (62.31(m)) is 2 hours. The Department of State estimates it will take each host family no more than 15 minutes per week or 13 hours per respondent to fill out a timesheet. The estimated hour burden per response for annual reporting to the Department of State (62.31(r)) is de minimus. The estimated hour burden per sponsor for maintaining records on the foreign third party (62.31(c)(3)) is 54 hours. The estimated hour burden per sponsor per response for the host family orientation disclosures (62.31(i)) is 24 hours. In sum, the annual burden is estimated to be an additional 82 hours per respondent (sponsor). The Department of State invites public comment on these estimates.

(7) An estimate of the total annual public burden (in hours) associated with the collection: The total estimated annual hour burden associated with this collection is 280,648 hours (82 hours per sponsor × 14 sponsors + 13 hours per host family × 21,500 host families).

(8) 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 $8,845,057.

The Department of State seeks public comment on:

- Whether the collection of information is necessary for the proper performance of the functions of the Department of State, including whether the information will have practical utility;
- The accuracy of the Department of State's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information to be collected; and
- How 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).

List of Subjects for Part 62

Cultural exchange programs, Reporting and recordkeeping requirements.

Accordingly, the Department of State proposes to amend 22 CFR part 62 as follows:

PART 62—EXCHANGE VISITOR PROGRAM

■ 1. The authority citation for part 62 is revised to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431 *et seq.;* 22 U.S.C. 2451 *et seq.;* 22 U.S.C. 2651(a); Pub. L. 105–277, Div. G, 112 Stat. 2681 *et seq.;* Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp. p. 200; E.O. 12048 of March 27, 1978; 3 CFR, 1978 Comp. p. 168; Pub. L. 104–208, Div. C, 110 Stat. 3009–546, as amended; Pub. L. 107–56, 416, 115 Stat. 354; and Pub. L. 107–173, 116 Stat. 543.

■ 2. Revise § 62.31 to read as follows:

§ 62.31 Au pairs.

(a) *Purpose.* The purpose of the Au pair category is to provide foreign nationals the opportunity to live with and participate directly in the home life of an American host family, provide child care, complete an educational component, and participate in cultural activities. Au pairs may enroll in either a part-time program (24–31 hours per week) or a full-time program (32–40 hours per week).

(b) *Program designation.* The Department of State may, in its sole discretion, designate bona fide programs satisfying the objectives set forth in paragraph (a) of this section and having the organizational capacity to successfully administer an au pair exchange program.

(c) *Program conditions.* Sponsors designated by the Department of State to conduct au pair exchange programs must:

(1) Establish standard operating procedures for headquarters and field staff (*e.g.,* local and regional coordinators), contractors, and third parties designed, at a minimum, to achieve the following goals and internal controls:

(i) Provision of sufficient resources for and training of headquarters and field staff to ensure both regulatory compliance and the health, safety, privacy, and welfare of au pairs and the children in their care;

(ii) Amendment to or termination of the Host Family Agreement in the event an au pair or host family requests a rematch;

(iii) Development of contingency plans covering au pairs at any time they are not living with a host family, (*e.g.,* during the rematch process and following removal from one home and prior to a new placement and/or prior to departing the United States), that at a minimum, describe the following conditions:

(A) Where au pairs live and who is responsible for providing living arrangements and food;

(B) Who is responsible for transportation costs for moving an au pair to a different geographic location, if necessary; and

(C) That the au pair is not responsible for costs associated with paragraphs (c)(1)(iii)(A) and (B) of this section.

(iv) Development of contingency plans covering funding of the educational component when a host family has or has not paid any or all of an educational stipend of a departing au pair, when an arriving or departing au pair has or has not received any or all of the educational stipend, and when the arriving or departing au pair has or has not completed any or all of the educational requirement.

(v) Establish the allocation of the non-income-related cost of paid time off and/or paid sick leave for au pairs when a host family has/has not given a departing au pair some or all of paid leave, and an arriving/departing au pair has/has not taken any or all of paid leave.

(vi) A process for rematching qualified au pairs to new placements, including for ending programs of au pairs for whom a new placement cannot be arranged;

(vii) Establish guidelines and identify circumstances and behaviors that indicate that an au pair is not qualified to remain on program and when the au pair's program must be terminated;

(viii) Establish a process for responding to issues, concerns, or emergencies revealed during routine monitoring or on an ad hoc basis.

(2) Require that all local coordinators authorized to act on the sponsor's behalf in both routine and emergency matters:

(i) Live within one hour's driving time from all placements for which they are responsible;

(ii) Do not have a family or work connection with the host families for whom they are responsible;

(iii) Be responsible for no more than 15 placements if they work with the program for fewer than 32 hours per week (*i.e.,* part-time); and

(iv) Be responsible for no more than 30 placements if they work with the program for 32–40 hours per week (*i.e.,* full-time).

(3) A sponsor that engages third parties, as defined in § 62.2, that operate outside the United States (*i.e.,* foreign third party) to act on their behalf in the administration of its au pair program will be held accountable by the Department of State for the actions of those foreign third parties and must:

(i) Annually execute a written agreement that outlines the obligations and full relationship between the sponsors and such third parties on all matters involving fulfilling the core programmatic functions of screening and orientation that may be conducted outside the United States; including descriptions of all the services and associated costs that it may charge applicants/au pairs, including any recruitment fees charged prior to official acceptance into the program, before and during their programs;

(ii) Annually review and maintain the following documentation for potential or existing foreign entities on the Foreign Entity Report set forth in paragraph (r) of this section:

(A) Proof of business licensing and/or registration to enable them to conduct business in the jurisdiction(s) where they operate;

(B) Disclosure of any previous bankruptcy and of any pending legal actions or complaints against such an entity on file with local authorities;

(C) Summary of previous experience conducting J–1 Exchange Visitor Program activities;

(D) A copy of the sponsor-approved advertising materials the foreign entities intend to use to market the sponsors' programs (including original and English translations); and

(E) A copy of the foreign entity's notarized recent financial statements.

(4) Draft and implement standard operating procedures and internal controls to ensure that foreign entities comply with the terms of such agreements.

(5) Solicit from host families and au pairs information for reporting requirements under this section (including but not limited to those identified in paragraph (r) of this section).

(d) *Au pair eligibility.* (1) In addition to satisfying the requirements of § 62.10(a)(1), sponsors must demonstrate that au pairs:

(i) Are between the ages of 18 and 26 as of the program begin date listed on Form DS–2019 (*i.e.,* au pairs may turn 27 during an initial program and still qualify for an extension);

(ii) Are secondary school graduates, or equivalent;

(iii) Are proficient in spoken English and able to seek aid or assistance in medical or other emergencies as evidenced by a report of a personal interview conducted in English by the sponsor;

(iv) Are capable of fully participating in the program as documented by a report (with English translation) from a licensed physician that the applicant satisfactorily completed a physical exam (completed no more than 45 days prior to execution of the contract by the au pair and the host family) including, among other things proof of the following conditions:

(A) Are fully vaccinated pursuant to the current recommendations of the Advisory Committee for Immunization Practices (see, *e.g., https://www.cdc.gov/vaccines/schedules/downloads/adult/adult-combined-schedule.pdf*); and

(B) Are free from active or latent tuberculosis demonstrated pursuant to a tuberculosis test currently approved by the Food and Drug Administration or a chest x-ray.

(v) Are interviewed both by the sponsor and the host family;

(vi) Demonstrate good character, as evidenced by three, non-family related personal or employment references (with English translations) and a criminal background check report or its recognized equivalent (with English translation); and

(vii) Demonstrate suitability to be an au pair, as evidenced by a personality profile (with English translation) that is based upon a psychometric test designed to measure differences in characteristics among applicants against those characteristics considered most important to successfully participate in the au pair program.

(2) For au pairs who will be placed with host families where driving is a requirement as written in the Host Family Agreement:

(i) Possess an active driver's license from their home country issued at least one year before the program begin date; and

(ii) Be able to obtain an international or jurisdictional driver's license if required by the jurisdiction in which the au pair is placed.

(3) Are not accompanied by a spouse or dependent while on program.

(e) *Au pair placement.* Sponsors must demonstrate they have secured a host family placement prior to the au pair's departure from the home country or before being placed with a new host family (*i.e.,* rematch) by obtaining the signatures of the host family and au pair on a dated Host Family Agreement.

(1) Sponsors shall not:

(i) Place an au pair with a host family unless a head of household(s) or other responsible adult will remain in the home for the first three days following the au pair's arrival;

(ii) Place an au pair with a host family having a child aged less than three months unless the au pair and host family have specifically agreed in writing that that a parent or other responsible adult will be primarily responsible for the infant at all times;

(iii) Place an au pair with a host family having any children under the age of two unless the au pair has at least 200 hours of documented infant child care experience no later than the program begin date.

(iv) Place an au pair with a host family having a special needs child, as so identified by the host family, unless the au pair has specifically identified his or her prior experience, skills, or training in the care of special needs children and the host family has reviewed and acknowledged in writing the au pair's prior experience, skills, or training so identified;

(v) Place an au pair with more than one host family to provide child care outside of the primary host family; and

(vi) Place an au pair with a host family that is not capable of providing a comfortable and nurturing home environment free from sexual harassment, exploitation, or any other type of abuse. Sponsors must ensure that the home is safe, comfortable and clean; and that the au pair has a private and lockable bedroom with a bed that is neither convertible nor inflatable in nature, and has adequate storage space for clothes and personal belongings; a private and lockable bathroom; and reasonable, unimpeded access to the outside of the house during non-child care hours, while the au pair is on leave, and in the event of a fire or similar emergency.

(2) Before finalizing an au pair placement, sponsors must:

(i) Provide the host family with the prospective au pair's complete application, including all references and a copy of the sponsor's interview report;

(ii) Provide the au pair with a description of the placement, including at a minimum:

(A) Short biographical description of host family members, including age and educational level;

(B) Information about host family work hours and children's school attendance;

(C) A description of the area in which the host family lives; and

(D) Any additional information necessary to reasonably inform the au pair about the family dynamic.

(f) *Au pair orientation*—(1) *Pre-departure materials.* In addition to the requirements in § 62.10(b), sponsors must provide au pairs the following information before they depart from their home countries:

(i) A copy of the Host Family Agreement with dates and all signatures;

(ii) A detailed summary of travel arrangements for the au pair to travel to and from the au pair's home country and the host family's home in the United States;

(iii) An explanation of requirements for au pair to purchase a round-trip ticket or obtain and bring on program a pre-paid return-flight airline voucher of a value equal to the cost of out-bound flight;

(iv) A copy of Department of State regulations governing the au pair's participation in the Exchange Visitor Program, welcome brochure, exchange visitors' rights and protections trifold, and advisory letter regarding the au pair program; information on the educational and cultural exchange goals of the program (including educational requirement and allowance); and

(v) Information on compensation and benefits (including in-kind benefits such as cell phone, gym membership, or access to personal car), allowable deductions, maximum work hours, time off; child care duties (including documenting child care hours); and requirements for paying state and Federal taxes.

(2) *Post-arrival orientation.* In addition to the requirements in § 62.10(c), sponsors must provide and document the au pairs' participation in a post-arrival orientation that covers, at a minimum, the following topics:

(i) The purpose and intent of the au pair program as an educational and

cultural exchange program that assists the Department of State in achieving U.S. foreign policy objectives and the au pair's role in an educational and cultural exchange program;

(ii) Sponsor and host family expectations of au pair behavior, including unacceptable actions; sponsor rules; rematch criteria, the specific family's guidance on the use of information about or photographs of the family members or family home; and the relevant portions of the Exchange Visitor Program regulations (*e.g.,* monitoring, sponsor support, permitted duties);

(iii) Sponsor resources available to assist au pairs in fulfilling the educational requirement and cultural goals of their program;

(iv) Information regarding paying State and Federal income taxes, withholding obligations, and how to seek tax preparation and filing assistance in the placement community; and

(v) Sponsor headquarter and local coordinator contact information, including the sponsor's 24/7 emergency contact information.

(g) *Au pair training.* Prior to placing an au pair in a host family home, sponsors shall provide the au pair with, and compensate the au pair for, the following required training:

(1) A minimum of eight hours of child safety instruction of which no less than four hours will focus on infants;

(2) A minimum of 24 hours of child development instruction of which no less than four hours will focus on children under the age of two; and

(3) For au pairs whose duties enumerated in the Host Family Agreement require driving, an online or in-person driving instruction course designed to introduce international drivers to U.S. driving customs; and information covering state and local driving laws (including safety information on, *e.g.,* child car seats, seat belts, and dangers and penalties for driving while intoxicated).

(h) *Host family eligibility.* Each sponsor must ensure that host families treat this program as an educational and cultural exchange and meet the following eligibility requirements prior to signing a Host Family Agreement with an au pair:

(1) Head of household(s) are U.S. citizens or lawful permanent residents;

(2) Head of household(s) are fluent in spoken English and are prepared to speak English with the au pair on a daily basis;

(3) No member of the immediate or extended host family is a relative of the au pair;

(4) All adult members living in the host family home have been personally interviewed by a sponsor representative;

(5) Every permanent member of the host family household 18 years of age or older, and any member of the host family household who will turn 18 during the au pair's program, and any adult who joins the household for more than 30 days demonstrates good character by:

(i) Undergoing a criminal background check (which must include a search of the Department of Justice's National Sex Offender Public Registry) at the time of the host family's application or promptly after joining the household, as appropriate; and

(ii) Providing at least one employment, if employed, and one personal character reference.

(6) The host family has adequate financial resources to undertake all the host family responsibilities specified in the regulations;

(7) The host family commits not to reside outside of the United States and its territories, for longer than a cumulative total of 30 days or at a domestic location within the United States that is more than one hour's drive from a local coordinator during the au pair's program;

(8) The host family commits to promptly report to the sponsor any material changes in the family composition, changes in circumstances that could create stress or anxiety within the family (*e.g.,* death, divorce, loss of job); and any host parent arrests or moving traffic violations.

(i) *Host family orientation.* (1) After a Host Family Agreement has been fully executed and prior to an au pair's arrival at a host family home, sponsors must conduct and document a host family orientation session for all adult family members. At a minimum, the sponsor must provide copies of the following documents:

(i) A copy of the signed and dated Host Family Agreement;

(ii) A copy of Department of State's Exchange Visitor Program regulations, brochures, and advisory letters regarding the au pair program;

(iii) A print-out of the current page from the Internal Revenue Service's website on the topic of ''Taxation of Nonresident Aliens.''

(2) The sponsor should include, at a minimum, discussions on the following topics, giving the host family the opportunity to ask questions to ensure they understand their obligations and the regulations governing the placement:

(i) The purpose and intent of the au pair program as an educational and cultural exchange program that assists the Department of State in achieving U.S. foreign policy objectives; the role of host families in achieving that purpose; and ongoing monitoring and reporting requirements;

(ii) All topics listed in the Host Family Agreement, including the mandatory family day conference organized by the sponsor.

(iii) The process and schedule for documenting and submitting the au pair's child care hours, maximum hours of child care, and the requirement to report within five calendar days child care hours in excess of program limits with an accompanying explanation of the exigent circumstances;

(iv) How to handle and seek sponsor assistance in case of problems and disputes with au pairs and how to report emergencies and problems to the sponsor and/or the Department of State;

(v) Their requirement to promptly report to the sponsor any material changes in the family composition, changes in circumstances that could create stress or anxiety within the family (*e.g.,* death, divorce, loss of job); and any host parent arrests or moving traffic violations.

(vi) How cultural differences and practices may affect the host family or the au pair and strategies for facilitating cultural activities for their au pairs; and

(vii) The requirement to provide a safe, comfortable, and clean home environment free from sexual harassment, exploitation, or any other form of abuse; the au pair's right to privacy when not providing child care duties (*e.g.,* private bedroom and private bathroom, possession of personal belongings and travel or other documentation (*i.e.,* passport, visa, Form DS–2019)).

(j) *Host Family Agreement.* Prior to issuance of Form DS–2019, sponsors must prepare a standard agreement between the au pair and host family that is printed on sponsor letterhead or otherwise indicates the placement is ''under the sponsorship of [name of sponsor].'' The agreement must include, at a minimum, the following sections, and the au pair and host family must individually initial each section to demonstrate their review of and acceptance of the following provisions:

(1) *Fees.* An itemized list of the total fees and estimated costs of the program charged by the sponsor and the sponsor's third parties that the au pair and host family each will incur;

(2) *Duties.* The agreement must include lists of the types of child care duties that are appropriate for an au pair and the types of duties that are not:

(i) Appropriate au pair duties involve assisting with the daily needs and schedules of host family children by performing activities like the ones listed below:

(A) Running children-related errands;

(B) Driving or escorting children to school, appointments, outings, and activities;

(C) Preparing children's meals and snacks and cleaning up afterwards;

(D) Tidying the children's bedrooms and bathrooms including making beds, changing sheets, doing children's laundry, and picking up toys;

(E) Monitoring children's homework and chores (including monitoring the feeding or walking of pets);

(F) Bathing and dressing children; and

(G) Additional duties associated with a child with special needs, which should be listed.

(ii) Inappropriate au pair duties involve the activities listed below, and assignment of these or similar activities may result in sponsor termination of the host family from the program:

(A) Providing professional, medical or nursing services;

(B) Running family-related errands, such as grocery shopping;

(C) Cleaning the house or working in the yard;

(D) Doing host parent laundry;

(E) Preparing meals for the family or cleaning the kitchen;

(F) Managing the household, including correspondence;

(G) Mandatory responsibility for pets;

(H) Caring for other people's children during off-site play date; and

(I) Other duties that are not related to the host children.

(3) *Weekly schedule.* The sponsor should ensure that the host family prepares a typical weekly schedule (including duties and hours) for the sponsor to review (to confirm its compliance with regulatory requirements) before including it in the agreement. To modify the schedule, the sponsor should ensure that the host family prepares a new typical weekly schedule (with input from the au pair, as appropriate) and submits it to the sponsor for review before seeking approval from the au pair.

(4) *Weekends.* A statement that the host family and the au pair agree that the host family will identify, before the end of each month, the weekends during the next month that the au pair need not provide child care.

(5) *Paid time off.* A statement containing the following points:

(i) The au pair agrees to provide four weeks' notice prior to taking paid time off.

(ii) The host family may not dictate when the au pair takes paid time off.

(iii) If the host family takes the au pair on a family vacation, they must pay all the au pair's room, board, and transportation costs and, although the schedule may vary, the au pair may only work the permissible number of hours.

(6) *Compensation.* A summary of the gross compensation (*i.e.,* not net of taxes) that the host family will pay the au pair weekly. Sponsors shall require host families to identify the highest of the Federal, State, or local minimum wage on the host family application, and also require host families to notify the sponsor if there is a change to the Federal, State, or local minimum wage during the au pair's program, and if necessary, initiate an updated Host Family Agreement under the compensation paragraph.

(7) *Hours of child care.* A statement that the au pair's obligation is limited to no more than ten hours per day and no more than 31 or 40 hours per week, depending upon whether the au pair is on a part-time or full-time program, and that overtime is not permitted except in exigent circumstances.

(8) *Excess hours.* A statement that host families must report within five calendar days child care hours in excess of program limits with an accompanying explanation of the exigent circumstances.

(9) *Education component.* A statement containing the following points:

(i) Both parties have read the four options available for the au pair to complete the educational component of the program;

(ii) The au pair will pursue one of the options;

(iii) The host family will facilitate the au pair's efforts to pursue one of the options, including finding alternate child care if necessary and assisting with transportation; and

(iv) The host family will pay to the au pair or school the required educational stipend.

(10) *Room and board.* Identify the number of days per week, including weekends, that that the host family will provide lodging and meals.

(11) *In-kind benefits.* A list of in-kind benefits (*e.g.,* cell phone, gym membership, car for personal use) the host family will provide the au pair, including charges for such benefits, if applicable and if the au pair wishes to avail themselves of such benefits.

(12) *Training.* A summary of any training the sponsor will provide the au pair, including specialized training for babies, infants, and children with special needs.

(13) *Home Environment.* A statement of the host family's commitment to provide the au pair with a safe, comfortable, and clean home environment—free from sexual harassment, exploitation, or any other form of abuse—including a suitable private bedroom with a bed for the au pair that is neither convertible nor inflatable in nature, adequate storage space for clothing and personal belongings, study space, access to bathroom facilities that are lockable and not connected to any private bedroom other than the au pair's, or that are lockable and connected to the au pair's own bedroom and not shared with a family member or any other resident in the home, and with reasonable unimpeded access to outdoors for the au pair's non-child care hours and leave and in case of emergencies.

(14) *Changes to the Host Family Agreement.* Sponsors must approve any changes to the Host Family Agreement and maintain written documentation with both parties' signatures to effect such changes.

(15) *Terms of Host Family Agreement.* Sponsors have the option to end their relationships with host families and end the programs of au pairs who do not follow the terms the parties agreed to in the Host Family Agreement or authorized modifications thereto.

(16) *Request rematch.* The Host Family Agreement does not limit an au pair or host family from requesting a rematch pursuant to paragraph (l) of this section or from ending their participation in the au pair program in accordance with sponsor procedures.

(k) *Au pair limitations and protections.* (1) Sponsors shall require that:

(i) With the exception of at-home play dates, host families may not place au pairs in charge of children that are not part of the host family; and a sufficient number of adults must be present at any group activity to supervise the children for whom the au pair is not responsible.

(ii) At a minimum, host families must give au pairs an uninterrupted eight-hour period of rest per every 24 hours to ensure adequate sleep and time away from duty.

(iii) At a minimum, host families must give au pairs one and one-half consecutive days off (36 hours) each calendar week and one complete weekend (48 hours) off each calendar month.

(iv) At a minimum, host families must give au pairs 56 hours of paid sick leave for a 12-month program and a pro-rated number of sick leave hours for program extensions shorter than 12 months. If the need for sick leave is foreseeable, the request should be made seven days in advance. If the need for sick leave is

not foreseeable, the au pair should request leave as soon as practicable after becoming aware of the need for leave.

(v) At a minimum, host families must give au pair 80 hours (*e.g.,* the equivalent of ten working days) of paid time off prior to the completion of a 12-month program, at the au pair's request. The host family must permit the au pair to take 40 hours of such leave in conjunction with a 36- or 48-hour weekend. Host families may not dictate when au pairs may take paid time off. If they take the au pair on a family vacation, they may not subtract any time off from the au pair's 80 hours leave time.

(vi) No host family may deprive an au pair from access to, or withhold or hold without the au pair's permission, an au pair's identification papers (including passport and Social Security card), cellphone, flight tickets or other travel documents, Form DS–2019, or other personal property. Sponsors shall require that host families may not prevent communication between an au pair and the sponsor or the Department of State at any time, and between the au pair and his or her family while the au pair is not providing child care.

(vii) Host families must provide au pairs a safe, comfortable, and clean home environment free from sexual harassment, exploitation, or any other form of abuse, and they must respect the au pair's privacy, including both their personal living space and their personal belongings, including travel or other documentation (*e.g.,* passport, visa, Form DS–2019); and

(viii) Host family members may not photograph or create video recordings (*e.g.,* use a nanny-cam) of an au pair without prior and ongoing consent by the au pair. Host family members may not photograph or create video recordings of the au pair's private bedroom or primary bathroom while the au pair occupies them.

(2) Sponsors may terminate host families from the program if they fail to comply with the requirements in paragraph (k)(1) of this section.

(l) *Rematch.* Irreconcilable differences between a host family and au pair require that the au pair be removed from the host family home. The sponsor must report these instances to the Department of State within the next business day and pursuant to reporting requirements at paragraph (r)(2) of this section.

(1) If the sponsor determines that actions on the part of the au pair demonstrate their unsuitability to be placed with a new host family, the sponsor must end the au pair's program in the Student and Exchange Visitor Information System (SEVIS) and ensure that return travel expenses have been secured.

(2) If the sponsor determines that the au pair still meets the au pair eligibility criteria, the sponsor must make an expedient, fair, and good faith effort to find a new host family placement for the au pair.

(3) If the au pair does not wish to be rematched, the sponsor must end the au pair's program in SEVIS, and the au pair will receive no refund from the sponsor, unless the au pair was subject to harassment, exploitation, or any other form of abuse in the au pair placement.

(4) Au pairs that have completed 75 percent of their initial program or are on six-, nine-, or 12-month extensions may not request a rematch and are not entitled to any refund of fees paid.

(5) If the sponsor is unable to find a suitable rematch for the au pair, the sponsor must refund the following percentages of all fees they charged the au pair to participate in the program, as well as a percentage of the return trip ticket, based on the portion of the program duration the au pair completed before leaving the host family's home:

(i) Less than 25% of the initial program duration: 75%.

(ii) Between 25–49% of the initial program duration: 50%.

(iii) Between 50–75% of the initial program duration: 25%.

(iv) Over 75% of the program duration: 0%.

(6) Before a rematched au pair moves into a new host family home, sponsors must confirm that new host family meets the eligibility requirements set forth in paragraph (h) of this section, obtain a fully executed Host Family Agreement between the rematched au pair and the new host family; and conduct a host family orientation as set forth in paragraph (i) of this section.

(7) For an au pair that has enrolled in an in-person class, the sponsor should use best efforts to place the au pair in a geographic locale that is convenient for continuation of the class.

(m) *Hours.* (1) The weekly hours an au pair may provide child care must be stipulated in the Host Family Agreement and may:

(i) Either be identified as a part time program providing 24–31 hours of child care per week, or identified as a full-time program providing 32–40 hours of child care per week;

(ii) Not carry over hours not worked in one week (*i.e.,* the difference between an au pair's actual hours worked in a week and their program's maximum-hours limit) over to the next week to exceed the program's maximum-hours limit in that next week; and

(iii) Not provide more than ten hours of child care each day.

(2) Hours providing child care is defined as follows:

(i) Any time the au pair is a caretaker for the family children (including time to drop off or pick up children);

(ii) Any time the au pair is ''on call,'' (*i.e.,* periods of time they are not free to do as they please, because the host family has an imminent need for child care); and

(iii) Time spent at the required family day conference.

(3) Time spent by an au pair with host families during which the au pair is entirely relieved of child care duties and voluntarily participating as a member of the family, not as a caretaker, is not considered time providing child care.

(4) When an au pair is required to work overnight hours:

(i) The au pairs' regular work schedules may not include providing child care between 11 p.m. and 5 a.m., unless exigent circumstances arise, in which case the au pair may work these hours for no more than three consecutive nights;

(ii) If the au pair is considered a caretaker during these overnight hours, the au pair may nevertheless sleep and count these hours toward providing child care: and

(iii) To the extent overnight hours result in hours exceeding the maximum amount permitted under the program, the au pair must be compensated as specified in paragraph (n)(4)(iv) of this section.

(5) If the host family and au pair agree to change the number or schedule of child-care hours due to extenuating circumstances (*e.g.,* a reduction or change in hours to facilitate the au pair's pursuit of the educational component), sponsors must ensure that they modify and re-execute the Host Family Agreement.

(6) Sponsors shall develop and implement written standard operational procedures to track and document the weekly compensation in conformance with paragraphs (n)(1) and (2) of this section, and to ensure that:

(i) Host families create a written weekly document signed by the host family and the au pair (in wet ink or using electronic signature) detailing the number of hours and days of provided child care that week, the number of hours used as the required time off, the total amount of compensation paid to the au pair for that week, any room and board deductions taken, any paid time off or sick leave used, if applicable; and

(ii) Host families provide copies of the signed document to the au pair each

week, and sponsors must collect and review the documents each month.

(7) Sponsors may terminate the program participation of a host family or au pair if they do not adhere to the maximum hours and requirements set forth in this section or if there are repeated requests for child care hours in excess of program limits.

(n) *Compensation.* Sponsors must ensure that:

(1) Host families compensate au pairs on a weekly basis based on the maximum number of child care hours of the au pair program and for any hours worked in excess of that maximum number and keep a document as set forth in paragraph (m)(6) of this section. Weekly payments shall be deposited directly into a bank account held in the au pair's name.

(2) Host families are permitted to deduct room and board expenses as set forth under the Fair Labor Standards Act and agreed upon in the Host Family Agreement. Credits for room and board may be taken only when the employee actually receives the lodging and meals. The following amounts are permissible credits under the FLSA towards an au pair's wages for meals actually provided: $2.72 for a breakfast, $3.63 for a lunch, and $4.53 for a dinner (or $10.88 per day if all meals are provided). The following amount is a permissible credit under the FLSA towards an au pair's wages for lodging actually provided: $54.38 per week. The total permissible credit towards an au pair's wages per week for a full seven days of room and board actually provided is $130.54 (7 times $10.88 equals $76.16 for a full week of meals plus $54.38 for a full week of lodging). The permissible credit does not change based on the tier wage level at which the au pair is compensated.

(3) Host families are permitted to deduct from au pair's pay any cost of in-kind benefits that are agreed upon in the Host Family Agreement. The host family may charge the au pair for such benefits if the au pair agrees to the charge and the host family does not profit from the amount charged. The host family may not, however, deduct from the au pair's wages items that are primarily for the benefit or convenience of the host family or sponsor, nor may the host family require the au pair to reimburse the host family in cash for the cost of such items in lieu of deducting the cost from the au pair's wages. The host family may charge the au pair for such benefits only if the in-kind benefit is truly for the benefit of the au pair, the au pair agrees to the charge, and the host family does not profit from the amount charged. Sponsors must ensure that the host family does not charge the au pair if the host family requires the au pair to accept any of the benefits (such as a cell phone so that the family may reach the au pair); and

(4) The hourly rate of compensation is based on a multi-tiered system.

(i) The sponsor must first identify the highest of the Federal, State, or local minimum wage rate that applies to the jurisdiction in which the host family's primary residence is located;

(ii) The sponsor then determines the hourly rate the host family must pay the au pair based on the tier in which the rate identified falls in the following table:

	Based upon the host family city, the highest of Federal, State, or local min wage	Au pair receives
Tier 1	$7.25–$8.00 per hour	$8 per hour.
Tier 2	$8.01–$12.00 per hour	$12 per hour.
Tier 3	$12.01–$15.00 per hour	$15 per hour.
Tier 4	$15.01–$18.00 per hour	$18 per hour.*

* Or the applicable Federal, State, or local minimum hourly wage, if higher.

(iii) The au pair receives the maximum amount of the identified tier, or the highest of the applicable Federal, State, or local minimum wage if higher.

(iv) When part-time au pairs work more than 31 hours in a week regardless of the reason but not more than 40 hours, they shall be compensated for those excess hours at the hourly rate of the applicable tier identified in paragraph (n)(4)(ii) of this section or the highest of the applicable Federal, State, or local minimum wage if higher. When part-time or full-time au pairs work over 40 hours in a week regardless of the reason, they shall be compensated for those excess hours at the hourly rate of the applicable tier identified in paragraph (n)(4)(ii) of this section or the highest of the applicable Federal, State, or local minimum wage if higher, and they must also be paid any overtime premium due under applicable Federal, State, or local law. In addition, au pairs must be paid any other overtime premiums due under applicable Federal, State, or local law for other hours worked.

(v) The Department of State will periodically, but no less than every three years (or at any shorter interval that is desirable and feasible), update the hourly pay rates in the chart in paragraph (n)(4)(ii) of this section via Notice, in the **Federal Register**, in response to changes in economic conditions. The required change will be accomplished by adjusting the upper range of each tier by an identical amount each update cycle. Although the Department of State will strive to increase the hourly pay rates in the chart to keep up with the highest applicable minimum wage, if an au pair resides in a jurisdiction that has a minimum wage that is higher than the upper range of Tier 4, the au pair shall be paid at that higher minimum wage rate regardless of the rate in Tier 4.

(o) *Educational component.* A sponsor must ensure that au pairs complete one of the following four educational component options during an initial, extended, or rematched program:

(1) *Academic coursework option:* Enroll in or register at a U.S. post-secondary accredited academic institution and demonstrate that the au pair either completed with a passing mark or successfully audited the required course(s).

(i) For the initial twelve-month program and for a nine- or twelve-month extension, an au pair must pass or formally audit academic coursework equivalent to three semester classes (nine semester hours or their equivalent).

(A) An au pair may pursue no more than one third of the required coursework online if local circumstances permit.

(B) This coursework must be spread over two semesters or equivalent.

(ii) For a six-month extension, an au pair must attend in-person classes and pass or formally audit academic coursework equivalent to one semester class (three semester hours or their equivalent)

(2) *Continuing education option:* Enroll in a continuing education institution and successfully complete in-person classroom-based coursework.

(i) For the initial twelve-month program and for a nine- or twelve-month extension, an au pair must successfully complete 10 continuing education credits/units (CEUs) which is equivalent to 100 contact hours;

(ii) For a six-month extension an au pair must successfully complete five CEUs or 50 contact hours.

(3) *Customized course option:* Enroll in an in-person classroom-based, customized course designed for au pairs and developed by a sponsor with a U.S. post-secondary accredited academic institution or a continuing education institution:

(i) For the initial twelve-month program and for a nine-or twelve-month extension, an au pair must pass or formally audit a customized course that is equivalent to nine semester hours, ten CEUs, or 100 contact hours.

(ii) For a six-month extension, an au pair must successfully complete three semester hours, five CEUs, or 50 contact hours,

(4) *Combination option:* Complete a combination of community service and in-person academic or continuing education coursework.

(i) For the initial twelve-month program and for a nine- or twelve-month extension, an au pair must successfully complete:

(A) 48 hours of volunteer, unpaid community service at a 501(c)(3) tax exempt organization that is dedicated to a charitable, civic, humanitarian, or other similar purpose; and

(B) Successfully pass or audit three semester hours of in-person classroom based academic coursework at a U.S. post-secondary academic institution, or five CEUs or 50 contact hours of in-person continuing education classes.

(ii) For a six-month extension, an au pair must successfully complete:

(A) 45 hours of volunteer, unpaid community service at a 501(c)(3) tax exempt organization that is dedicated to a charitable, civic, humanitarian, or other similar purpose; or

(B) Successfully pass or audit three semester hours of in-person classroom based academic coursework at a U.S. post-secondary academic institution or five CEUs or 50 contact hours of in-person continuing education classes.

(5) *Incomplete Educational Component.* Au pairs that do not successfully complete the educational component of an initial placement are not eligible for an extension or to repeat the program.

(6) *Educational allowance.* Sponsors must ensure that host families pay directly to the au pair or the academic or continuing education institutions and present evidence of payment to their local coordinator and the au pair, towards actual and documentable course-related or community service costs necessary for the au pair to fulfill the program's educational requirements, up to $1,200 for a twelve-month program and an additional $1,200 for a nine or 12-month program extension, or up to an additional $600 for a six month program extension.

(p) *Monitoring.* Sponsors must fully monitor and document all au pair placements through personal contact (*i.e.,* in-person, through a text conversation, through an email exchange, or on the telephone). At a minimum:

(1) Sponsors shall require that all local and regional organizational representatives maintain dated records of all personal contacts with au pairs and host families for which they are responsible (detailing issues or problems discussed) and all documentation concerning the au pairs' child care hours provided, compensation, or deductions from pay.

(2) Sponsors must require that local coordinators:

(i) Make personal contact with each au pair and that au pair's host family separately within 48 hours following the au pair's arrival at the host family home;

(ii) Meets in person with each au pair and that au pair's host family together at the host family home no more than two weeks after an au pair's arrival at the host family;

(iii) For rematch (for either or both the au pair and host family) make personal contact separately and twice monthly (for two months) with the au pair and host family following the re-placement; and

(iv) Are appraised of their obligation to report unusual or serious situations or incidents involving either the au pair or host family.

(3) Sponsors must require:

(i) Local coordinators make separate, monthly, and personal contact with each au pair and host family for which the local coordinator is responsible;

(ii) Quarterly personal contact and documentation by the regional coordinators with each au pair and host family for which the regional coordinator is responsible.

(4) Sponsors shall require that its local or regional coordinators organize and implement, at a minimum, one family day in-person conference for au pairs and their host families both during an au pair's initial placement and extended placement, if appropriate. Family day conferences must be held in locations that are no more than 120 miles from each host family residence.

(q) *Duration and extensions.* (1) The initial duration of an au pair program is one year (*i.e.,* 12 consecutive months).

(2) The Department of State, in its sole discretion, may approve a one-time extension to stay with the current host family for a duration of six, nine, or 12 months for an au pair beyond the initial program period if the au pair still meets all eligibility requirements. Sponsors must submit applications and supporting materials for such extensions no less than 30 calendar days prior to the program end date listed on the au pair's Form DS–2019.

(3) Sponsors must submit extension application electronically in SEVIS and supporting documentation must be submitted to the Department of State on the sponsor's organizational letterhead and contain the following information:

(i) Au pair's name, SEVIS identification number, date of birth, the length of the extension period being requested;

(ii) Sponsor statement of assurance of the au pair's completion of the educational requirements during the initial program, as set forth in paragraph (o) of this section, through a transcript, certificate of completion, volunteer time sheet, or other suitable documentation; and

(iii) Proof of payment by the sponsor of the required non-refundable extension fee (see § 62.17) via *Pay.gov.*

(r) *Reporting requirements.* (1) In addition to the reporting requirements set forth in § 62.15, sponsors are required to submit the following supplemental reports annually by June 30:

(i) A report in SEVIS of all final program participation placements in the format directed by the Department of State. The information entered in SEVIS must be accurate to the best ability of the sponsor;

(ii) A summation of annual survey results for all host families and au pairs, indicating program strengths and weaknesses and level of satisfaction;

(iii) A summation of all complaints by host families and au pairs regarding host family or au pair participation in the program, nature of the complaint, its resolution, and whether any unresolved complaints are outstanding;

(iv) A summation of all situations that resulted in the removal or rematch of an au pair with more than one host family and situations where more than one au pair is placed with one host family during the program year;

(v) A complete set of all current promotional materials, brochures, or pamphlets distributed either to host families or au pairs by the sponsor or their foreign third parties (including

original and English translation, as applicable);

(vi) An annual itemized fee and cost schedules, including recruitment fees and associated costs; these schedules must correspond to those that the sponsor (and the sponsor's third party) has included in its recruitment materials and posted to a visible location on the sponsor's website;

(vii) Itemized au pair price lists (in accordance with any template the Department of State may provide) that identify on a country-specific basis the costs exchange visitors must pay each sponsor and foreign third party in order to participate in the program. Sponsors must submit separate lists for each country/foreign third party and each list should provide that third party's website address; and

(viii) A report by a certified public accountant, conducted pursuant to a format and on a schedule designated by the Department of State, attesting to the sponsor's compliance with the procedures and reporting requirements set forth in this subpart;

(2) In addition to § 62.13(d), report within the next business day to the Department of State any incident or allegation involving the actual or alleged sexual harassment, exploitation or any other form of abuse, or rematch of an au pair;

(3) Within 30 days of execution of a new written agreement with a foreign third party, a sponsor must provide the Department of State with that third party's name and contact information (*i.e.,* telephone number, email address, physical mailing address, point of contact, and website address). The sponsor also must provide the Department of State with updated contact information or changes in material information for its foreign third party within 30 days after receiving notice of any such change. Sponsors must utilize only vetted foreign entities identified in the Foreign Entity Report to assist in fulfilling the sponsors' core programmatic functions outside the United States, and they must inform the Department within 30 days after ceasing to work with a foreign third party previously identified.

(s) *Repeat participation.* Foreign nationals who enter the United States as au pairs, have successfully completed their programs, and have returned home are eligible to participate again as au pairs, provided that they have resided outside the United States for at least two years following completion of their most recent exchange program and meet all eligibility requirements as an au pair.

(t) *Relationship to state and local laws.* (1) In order to ensure nationwide consistency and coherent implementation of the Au pair category of the Exchange Visitor Program, the regulations in this section provide the exclusive requirements applicable to sponsors, host families and au pairs on the matters, and may not be supplemented by state or local law except as provided in paragraph (t)(3) of this section:

(i) Au pair selection.

(ii) Au pair placement.

(iii) Hours and compensation.

(iv) Unemployment insurance taxes and employment training taxes.

(v) Minimum time off and paid time off and sick leave; and

(vi) Educational component.

(2) In addition to the matters listed in paragraph (t)(1) of this section, the regulatory framework provided under this section shall preempt any state or local law that, in the Department of State's view, otherwise poses an obstacle to the realization of the objectives of the Au pair category of the Exchange Visitor Program except as provided in paragraph (t)(3) of this section. Sexual harassment and retaliation laws shall not be deemed to pose an obstacle to the realization of the objectives of the Au pair category.

(3) Notwithstanding the foregoing, state and local minimum wage and overtime pay requirements shall apply to au pairs where applicable and shall not be deemed to be an obstacle to the realization of the objectives of the Au pair category of the Exchange Visitor Program.

(u) *Severability.* In the event that any provision of this section is held invalid as applied to any person or circumstance, such provision shall be construed, as applied to other persons or circumstances, to have maximum effect to the extent permitted under law. If any provision of this section is deemed invalid and unenforceable in any circumstance, such provision is severable from the remaining provisions of this section.

(v) *Transition period.* Sponsors are not required to comply with the provisions of this section for au pairs with Program Begin Dates on the Form DS–2019 prior to the effective date of [180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE]. Au pair exchange programs with a Program Begin Date on Form DS–2019 prior to [180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE] are subject to the requirements of this section in effect at the time of the Program Begin Date. Any extensions of programs authorized prior to the effective date of [180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE] are also subject to the requirements from this section that were in effect at the time of the Program Begin Date. Any new programs with a Program Begin Date on or after the effective date of [180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE], or program extensions authorized on or after the effective date of [180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE] are subject to the requirements set forth in this section.

Karen Ward,

Director, Office of Private Sector Exchange Designation, Bureau of Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2023–23650 Filed 10–27–23; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 2, and 101

[WT Docket No. 20–133; DA 23–988; FR ID 181235]

Wireless Telecommunications Bureau Seeks To Refresh the Record in 70/80/90 GHz Bands Proceeding

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment to refresh the record in the rulemaking on *Modernizing and Expanding Access to the 70/80/90 GHz Bands* (85 FR 40168, July 6, 2020; 86 FR 60436, Nov. 2, 2021) to address the potential for use of the 71–76 GHz, 81–86 GHz, 92–94 GHz, and the 94.1–95 GHz (70/80/90 GHz) bands to provide broadband internet access to consumers and communities that may otherwise lack robust, consistent connectivity. Specifically, the Commission previously proposed new and updated rules to further enable non-Federal uses of the 70/80/90 GHz bands, which are currently allocated on a co-primary basis for Federal and non-Federal use. This document seeks to refresh the overall record in the docket and seeks comment, in particular, on the proposals made in a filing by the National Telecommunications and Information Administration (NTIA) on October 17, 2023 (NTIA October 17 Filing). In that filing, NTIA proposed technical rules and interference mitigation measures, including operating parameters for links to endpoints in motion in 71–76 GHz and 81–86 GHz, to protect current or

planned Federal operations in these frequencies and in adjacent bands.

DATES: Comments are due on or before November 8, 2023.

ADDRESSES: You may submit comments, identified by WT Docket No. 20–133, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *www.fcc.gov/ecfs/.*
- *Paper Filers:* Parties that choose to file by paper must file an original and one copy of each filing. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
  - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy,* Public Notice, DA 20–304 (Mar. 19, 2020), *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-andchanges-hand-delivery-policy.*

People with Disabilities. 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 and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

FOR FURTHER INFORMATION CONTACT: Jeffrey Tignor, Broadband Division, Wireless Telecommunications Bureau, at (202) 418–0530 or *Jeffrey.Tignor@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, DA 23–988, rel. October 17, 2023 in WT Docket No. 20–133. The full text of the document is available on the Commission's website at: *https://docs.fcc.gov/public/attachments/DA-23-988A1.pdf.* Text and Microsoft Word formats are also available (replace ''.pdf'' in the link with ''.txt'' or ''.docx'', respectively). Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Providing Accountability Through Transparency Act. A summary of this document is available at *https://www.fcc.gov/proposed-rulemakings.*

Synopsis. With this document, the Wireless Telecommunications Bureau (Bureau) seeks to refresh the overall record in WT Docket No. 20–133 and seeks comment, in particular, on the proposals in the NTIA October 17 Filing. In its *70/80/90 GHz NPRM,* the Commission proposed new and updated rules to further enable non-Federal uses of the 71–76 GHz, 81–86 GHz, 92–94 GHz, and 94.1–95 GHz bands (collectively, the 70/80/90 GHz bands), which are currently allocated on a co-primary basis for Federal and non-Federal use.[1] The Commission specifically committed to ''coordinate any proposed rule changes with the affected agencies and the National Telecommunications and Information Administration,'' noting the need to ''work with NTIA to evaluate potential impacts associated with any new or expanded non-Federal use of shared allocations.'' [2]

The *70/80/90 GHz NPRM* sought comment on a range of issues, including proposals by Aeronet Global Communications, Inc. (Aeronet) to use the bands to provide broadband service to aircraft and ships in motion.[3] The Commission also made proposals and solicited comment in part relating to applicable antenna standards, the extant link registration process, and possible band channelization.[4] Among other developments in this proceeding, on October 17, 2023, NTIA submitted a filing to supplement the record—comprised of a cover letter and three attachments—proposing technical rules and interference mitigation measures, including operating parameters for links to endpoints in motion in 71–76 GHz and 81–86 GHz, to protect current or planned Federal operations in these frequencies and in adjacent bands.[5] The NTIA October 17 Filing is based on the work of a technical interchange group (TIG) comprised of representatives from affected Federal agencies.[6]

Federal Communications Commission.

Blaise Scinto,

Chief, Broadband Division, Wireless Telecommunications Bureau.

[FR Doc. 2023–23738 Filed 10–27–23; 8:45 am]

BILLING CODE 6712–01–P

[1] *Modernizing and Expanding Access to the 70/80/90 GHz Bands,* WT Docket No. 20–133, Notice of Proposed Rulemaking, 35 FCC Rcd 6039 (2020), 85 FR 40168 (Jul. 6, 2020) (*70/80/90 GHz NPRM*); 47 CFR 2.106; *see also 70/80/90 GHz NPRM,* 35 FCC Rcd at 6040 through 41 paragraph 2 (providing additional details on existing Federal and non-Federal allocations in co- and adjacent bands and protections).

[2] *70/80/90 GHz NPRM,* 35 FCC Rcd at 6040, para. 1; *see also id.* at 6041, 6055 through 58, paragraphs 2, 40, 42–45 (seeking comment—if the Commission authorizes links to endpoints in motion—on technical rules and interference mitigation measures such as restrictions or unique operating parameters that might be necessary to protect, *inter alia,* co-primary and adjacent Federal operations including vehicular radars, passive services, and Radio Astronomy Services).

[3] *70/80/90 GHz NPRM,* 35 FCC Rcd at 6049 through 58, paragraphs 22 through 45.

[4] *70/80/90 GHz NPRM,* 35 FCC Rcd at 6045 through 48, paragraphs 10 through 17 (''Antenna Rules''); *id.* at 6048 through49 paragraphs 18 through 21 (''Link Registration Process''); *id.* at 6058 through 59, paragraphs 46 through49 (''Channelization Plan''). In October 2021 the Bureau issued a document seeking to further develop the record on the use of High Altitude Platform Stations (HAPS) or other stratospheric-based platform services in the 70/80/90 band. *Wireless Telecommunications Bureau Seeks to Supplement the Record on 70/80/90 GHz Notice of Proposed Rulemaking,* WT Docket No. 20–133, Public Notice, 36 FCC Rcd 14375 (WTB 2021), 86 FR 60436 (Nov. 2, 2021).

[5] Letter from Charles Cooper, Associate Administrator, Office of Spectrum Management, National Telecommunications and Information Administration, to Ronald T. Repasi, Chief, Office of Engineering and Technology, Federal Communications Commission, and Joel Taubenblatt, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, WT Docket No. 20–133 (filed October 17, 2023) (NTIA October 17 Filing). Attachment A to the NTIA Filing summarizes suggested interference mitigations based on collaboration between NTIA and the Federal operators identified in footnote 6, *infra;* Attachment B details the technical analyses performed by the same; and Attachment C proposes rule text for the Commission to consider.

[6] Specifically, the TIG included representatives from the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, the National Science Foundation, the Department of the Air Force, and NTIA itself. Commission staff participated in regular information exchange meetings with the TIG. NTIA October 17 Filing at 2.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[WC Docket Nos. 13–97, 07–243, 20–67; IB Docket No. 16–155; FCC 23–75; FR ID 181538]

Numbering Policies for Modern Communications

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes rules regarding direct access to numbers by providers of interconnected Voice over Internet

Protocol (VoIP) services. The Commission takes this action in furtherance of Congress' directive in the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act to examine ways to reduce access to telephone numbers by potential perpetrators of illegal robocalls. These proposals aim to safeguard U.S. numbering resources and consumers, protect national security interests, promote public safety, and reduce opportunities for regulatory arbitrage.

DATES: Comments are due on or before November 29, 2023, and reply comments are due on or before December 29, 2023. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public and other interested parties on or before December 29, 2023.

ADDRESSES: You may submit comments, identified by WC Docket No. 13–97, by any of the following methods:

- *Federal Communications Commission's Website: http://apps.fcc.gov/ecfs/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. Send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* or *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Wireline Competition Bureau, Competition Policy Division, Mason Shefa, at (202) 418–2494, *mason.shefa@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Nicole Ongele, *Nicole.Ongele@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Further Notice of Proposed Rulemaking* (Second Further Notice) in WC Docket Nos. 13–97, 07–243, 20–67, and IB Docket No. 16–155, adopted on September 21, 2023, and released on September 22, 2023. The document is available for download at *https://docs.fcc.gov/public/attachments/FCC-23-75A1.pdf.* To request materials in accessible formats for people with disabilities (*e.g.,* Braille, large print, electronic files, audio format, etc.), send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

Providing Accountability Through Transparency Act: The Providing Accountability Through Transparency Act, Public Law 118–9, requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule. The required summary of this Notice of Proposed Rulemaking/Further Notice of Proposed Rulemaking is available at *https://www.fcc.gov/proposed-rulemakings.*

Initial Paperwork Reduction Act of 1995 Analysis: This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due December 29, 2023.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy,* Public Notice, DA 20–304 (March 19, 2020), *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

People with Disabilities: 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).

The proceeding this document initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

This document may contain potential new or revised information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due December 29, 2023.

Comments should address: (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 burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) way to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Synopsis

1. In this *Second Further Notice of Proposed Rulemaking* (*Second Further Notice*), we seek comment on the duties of existing direct access authorization holders whose authorizations predate the new application requirements we adopt today. We also seek comment on whether direct access applicants should disclose a list of states in which they seek to provide initial service. Finally, we seek comment on a proposal to minimize harms that may arise from bad actors that access numbering resources indirectly by holding their direct access authorization holder ''partners'' accountable for their actions.

Second Further Notice of Proposed Rulemaking

2. By this *Second Further Notice,* we seek comment on the duties of existing direct access authorization holders whose authorizations predate the new application requirements we adopt today. We also seek comment on whether direct access applicants should disclose a list of states in which they seek to provide initial service. Finally, we seek comment on a proposal to minimize harms that may arise from entities that access numbering resources indirectly by holding their direct access authorization holder ''partners'' accountable for their actions.

Updating the Duties of Existing Authorization Holders

3. Part III.A of the *Second Report and Order* focuses on new applications for direct access to numbering resources. In the *VoIP Direct Access Further Notice,* 86 FR 51081 (Sept. 14, 2021), however, the Commission also asked whether some of the proposed new requirements should also apply to existing authorization holders (*i.e.,* interconnected VoIP providers that were granted direct access authorization prior to the effective date of this Report and Order and revised rules). In particular, the Commission asked about requiring such existing authorization holders to certify compliance with E911 and CALEA obligations; to certify they are not subject to a Commission, law enforcement or regulatory agency investigation for failure to comply with any law, rule, or order, including the Commission's rules applicable to unlawful robocalls or unlawful spoofing; and to abide by state numbering requirements and other applicable requirements for businesses operating in the state. There were very limited comments on this issue. Further, the *VoIP Direct Access Further Notice* did not ask about applying other proposed new requirements, also adopted here, to existing interconnected VoIP direct access authorization holders.

4. Given the limited record in response to the *VoIP Direct Access Further Notice,* 86 FR 51081 (Sept. 14, 2021), about the applicability of these proposed requirements to existing authorization holders, and in order to allow the Commission to address at one time whether all of the new requirements adopted in the *Second Report and Order* should apply to existing authorization holders, we propose that the new or revised certification, acknowledgment, and disclosure obligations set forth in Part III.A of the *Second Report and Order* should likewise apply to existing interconnected VoIP authorization holders. Specifically, we propose to require existing interconnected VoIP direct access authorization holders to provide the certifications, acknowledgments, and disclosures required by the following sections in Appendix A hereto, specifically § 52.15(g)(3)(ii)(B) through (F), (I), (K) through (L), (N), and (x)(A), within 30 days after the effective date of an order adopting such rules for existing authorization holders. We seek comment on this proposal.

5. The rationales for imposing each of these certification, acknowledgment, and disclosure obligations on future authorization holders, discussed in detail above, apply equally to existing interconnected VoIP direct access authorization holders. Obtaining this information from existing authorization holders would help the Bureau more effectively oversee the universe of direct access authorization holders by better enabling it to identify bad actors and preserve scarce numbering resources, while also balancing the obligations evenly for all authorization holders. Similarly, we propose to use the new information we require existing authorization holders to submit to determine whether a revocation of authorization, inability to obtain additional numbers, reclamation of unassigned numbers, or enforcement action may be warranted, just as if the information had been provided as part of a new application or an update or correction to their original application. We seek comment on this proposal.

6. With respect to these proposed requirements, we believe a 30 day deadline appropriately balances the strong public interest of the Bureau receiving this information against the burdens we anticipate these requirements may place on existing authorization holders, and seek comment on this conclusion. Do commenters agree that this deadline would strike the right regulatory balance? Would requiring existing authorization holders to provide the newly required certifications, acknowledgments, and other information impose an undue burden that would outweigh the potential benefits? Would requiring existing authorization holders to provide the newly required certifications, acknowledgments, and other information be necessary or appropriate to avoid asymmetrical regulation among interconnected VoIP providers? Alternatively, is this step necessary to narrow the gap in our oversight ability to reach potential bad actors with respect to numbering resources? Would declining to apply the new requirements to existing authorization holders place the Commission at a disadvantage in terms of investigating those authorization holders and enforcing the rules that apply to them? Would relying on Commission enforcement actions against existing authorization holders be as effective as the proposed new requirements in combating unlawful

robocalling and addressing the concerns raised regarding foreign ownership of entities with access to numbering resources pertaining to the United States? Are there any legal barriers to requiring existing authorization holders to provide the required information? Are there other factors we should consider?

7. *Executive Branch agencies' review of corrected information.* We propose to delegate authority to the Bureau to direct the Numbering Administrator via public notice to suspend all pending and future requests for numbers if the new information submitted by an existing authorization holder indicates a material change or discloses new information such that additional investigation is necessary to confirm that the authorization continues to serve the public interest. If the new information leads the Commission to refer the authorization holder to the Executive Branch agencies, we propose to authorize the Bureau to direct the Numbering Administrator via public notice to suspend all pending and future requests for numbers until review is complete and a determination is made. We seek comment on whether to use this process. In the alternative, is there another process we should use?

8. *Use of numbers after submission of updated or new information.* To avoid a disruption of service to customers during review of updated or corrected ownership information, we propose to permit authorization holders to continue to use numbers they obtained pursuant to our current procedures while submitting updated or corrected ownership information to the Bureau, unless and until the Bureau determines otherwise after investigation. We seek comment on this proposal.

Disclosure of Initial Service Area in Direct Access Applications

9. We propose to require new interconnected VoIP applicants to provide, in their direct access applications, a list of the states where they initially intend to request numbering resources. This proposal seeks to create parity with the requirement that other providers show authorization to provide service in the area(s) for which numbering resources are requested, which effectively requires them to identify the states where they initially will request numbers. It also would formalize the existing practice of the Bureau asking interconnected VoIP applicants to provide a list of the states where they intend to request numbers. We seek comment on this proposal. Would it place an undue burden on interconnected VoIP providers to provide this information? If so, how, given that all other providers are required to provide this information? Is it consistent with promoting symmetrical regulation? We also seek comment on whether requiring this information will help state commissions be better prepared to address interconnected VoIP provider applications pending at the Commission and consequently prepare for new numbering requests in their states. Is there a better way to help state commissions be aware of applications that may affect the demand on numbering resources in their states from new applicants?

Ensuring That Indirect Access Serves the Public Interest

10. We propose to require direct access authorization holders that sell, lease, or otherwise provide telephone numbers obtained via direct access to a voice service provider (an ''indirect access recipient'') to: (1) obtain from the indirect access recipient all the same certifications, acknowledgments, and disclosures the indirect access recipient would have had to provide under § 52.15(g)(3), had the recipient applied for direct access to numbering resources itself; (2) obtain from the indirect access recipient all subsequent updates or corrections that would be required of a direct access authorization holder under § 52.15(g)(3); (3) retain a copy of all such certifications, acknowledgments, disclosures, and corrections and updates, to be provided to the Commission upon request; and (4) file with the Commission a list of the voice service providers to which the direct access authorization holder sells, leases, or otherwise provides telephone numbering resources that it obtained directly, and update that list within 30 days of adding any new indirect access recipient. We propose to apply these duties on a prospective basis to existing direct access authorization holders that provide telephone numbering resources to indirect access recipients after the effective date of the proposed new rule. We also propose to require future direct access applicants to certify they will abide by these requirements. We seek comment on these proposals.

11. As noted in the accompanying *Second Report and Order,* a key reason for strengthening the direct access application requirements is to enhance the Commission's ability to ensure interconnected VoIP providers comply with regulations targeting illegal robocalls and other important requirements, and provide information to help the Commission address potential issues related to foreign ownership. As also noted above, however, interconnected VoIP providers can obtain numbers indirectly, such as from a competitive LEC that has a direct access authorization. Because interconnected VoIP providers' use of finite telephone numbering resources via indirect means raises the same potential robocalling, access arbitrage, and other public interest issues as use of numbers by providers with direct access, we seek comment on whether it is appropriate for the Commission to apply the same showings as required from interconnected VoIP providers that obtain numbering resources directly. We simultaneously refer questions to the NANC regarding the use and misuse of numbering resources obtained indirectly in our accompanying *Second Report and Order* above. We do so to ensure we have a fulsome record should we decide to take action on this issue in the future.] We believe that by ensuring all interconnected VoIP providers that receive access to numbers, whether directly or indirectly, make the certifications, acknowledgments, and disclosures required in direct access applications, the Commission can improve its ability to protect consumers from entities that evade our robocalling and other rules. In the Access Arbitrage proceeding, we took steps to strengthen our protection of consumers by requiring that an entity with direct access to numbers is responsible for the actions of a provider it subsequently indirectly assigns some or all of its numbers to. The entity receiving numbers directly is responsible (for purposes of Access Stimulation traffic ratio calculations) for call traffic to and from its OCN regardless of whether that entity subsequently indirectly assigns those telephone numbers to other providers. We seek comment on this position.

12. Do commenters agree that this process would accrue the benefits to consumers that we describe? If so, would such benefits outweigh the potential burdens on direct access authorization holders and indirect access recipients? What are the negative consequences of this process for consumers, providers, and competition? Would the proposed requirements create a disincentive for direct access recipients to provide numbers to indirect access recipients? If so, is that good or bad for the public interest and consumers? For example, could this process incentivize indirect access recipients to seek direct access? How large is the secondary market for numbers obtained via direct access?

Who are the main customers? How are resold numbers being used?

13. We seek comment on the Commission's role to enforce our rules and obligations pertaining to direct access and numbering. What enforcement actions could the Commission take, or what penalties could it impose, on a direct access recipient that fails to obtain, retain, or provide the Commission with the necessary certifications, acknowledgments, and disclosures, or that fails to provide and keep current a list of the indirect access recipients to which it provides numbers? Could or should enforcement include revisiting or revoking the direct access authorization holder's authorization? Would the Commission have authority, if an indirect access recipient were suspected or convicted of illegal robocalling or spoofing, to direct the Numbering Administrator to stop providing telephone numbers to the direct access authorization holder, and/or to prohibit the direct access authorization holder from providing numbers to the indirect access recipient? What other consequences, if any, should we consider for the direct access authorization holder when a recipient on its list is found to have violated the Commission's numbering rules or other laws or regulations? We propose to apply the new duties prospectively, but is there any reason why we should not require existing direct access authorization holders to gather, retain, and provide the required information regarding indirect access recipients to which they have already provided numbering resources? If not, how much time should we give existing authorization holders to provide information regarding these indirect access recipients?

14. What other means should we consider to close the gap in our visibility into the use of numbering resources and related activities of indirect access recipients? How would these proposals address a scenario in which an indirect access recipient provides numbers to another indirect access recipient? Do indirect access recipients provide numbers that they obtained indirectly to other providers? How would or should we hold the direct access authorization holders accountable for indirect access recipients of its numbers that are further along this chain of providers?

15. *Filing process.* Regarding the list of indirect access recipients to which a direct access authorization holder sells, leases, or otherwise provides numbers it obtained directly, we propose requiring direct access authorization holders to submit such list and any required updates to the Commission via the ''Submit a Non-Docketed Filing'' module in Electronic Comment Filing System (ECFS) established for the VoIP Direct Access proceeding (Inbox—52.15 VoIP Numbering Authorization Application) and via email to *DAA@fcc.gov,* our email alias for interconnected VoIP direct access to numbers applications. We believe that this approach will facilitate informed and timely review by interested members of the public and Commission staff, and we seek comment on this proposal. Should the lists of indirect access recipients be kept confidential, subject to a protective order, or otherwise shielded from public access?

Legal Authority

16. We tentatively conclude that section 251(e)(1) of the Act, which grants us ''exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States,'' provides us with authority to adopt our proposals. We seek comment on this conclusion. In the *VoIP Direct Access Order,* 80 FR 66454 (Oct. 29, 2015), the Commission concluded that section 251(e)(1) provided it with authority ''to extend to interconnected VoIP providers both the rights and obligations associated with using telephone numbers.'' Consistent with the Commission's well-established reliance on section 251(e) numbering authority with respect to carriers and interconnected VoIP providers, we propose concluding that section 251(e)(1) allows us to further refine our requirements governing direct access to numbering resources. We seek comment on this proposal. Consistent with the *VoIP Direct Access Order,* 80 FR 66454 (Oct. 29, 2015), we also propose concluding that refining our application and post-application direct access requirements would not conflict with Sections 251(b)(2) or 251(e)(2) of the Act. We seek comment on this proposal.

17. We also tentatively conclude that section 6(a) of the TRACED Act provides us with additional authority to adopt our proposal. Section 6(a)(1) directs that: [n]ot later than 180 days after the date of the enactment of this Act, the Commission shall commence a proceeding to determine how Commission policies regarding access to number resources, including number resources for toll free and non-toll free telephone numbers, could be modified, including by establishing registration and compliance obligations, and requirements that providers of voice service given access to number resources take sufficient steps to know the identity of the customers of such providers, to help reduce access to numbers by potential perpetrators of violations of section 227(b) of the Communications Act of 1934 (47 U.S.C. 227(b)). The Commission commenced the proceeding as required by section 6(a)(1) of the TRACED Act in March 2020, and this *Second Further Notice* expands on those inquiries. Section 6(a)(2) of the TRACED Act states that ''[i]f the Commission determines under paragraph (1) that modifying the policies described in that paragraph could help achieve the goal described in that paragraph, the Commission shall prescribe regulations to implement those policy modifications.'' We propose concluding that section 6(a) of the TRACED Act, by directing us to prescribe regulations implementing policy changes to reduce access to numbers by potential perpetrators of illegal robocalls, provides an independent basis to adopt the changes we propose to the direct access process with respect to fighting unlawful robocalls, and we seek comment on this proposal. Should we interpret section 6(a) of the TRACED Act as an independent grant of authority on which we may rely here? Section 6(b) of the TRACED Act authorizes imposition of forfeitures on certain parties found in violation ''of a regulation prescribed under subsection (a),'' which we tentatively conclude supports our proposal to find that section 6(a) of the TRACED Act is an independent grant of rulemaking authority. We seek comment on this position. Should we codify or adopt any regulations to implement the forfeiture authorization in section 6(b) of the TRACED Act, including as to indirect access recipients, and if so, what regulations should we adopt?

Promoting Digital Equity and Inclusion

18. The Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Section 1 of the Act provides that the Commission ''regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.'' The term

''equity'' is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well as the scope of the Commission's relevant legal authority.

Procedural Matters

19. We have also prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of the rule and policy changes contained in the *Second Further Notice.* The IRFA is set forth in Appendix C. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the *Second Further Notice* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

20. *Paperwork Reduction Act.* The *Second Further Notice* also may contain proposed new and revised information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Ordering Clauses

21. *It is further ordered* that the Commission's Office of the Secretary, Reference Information Center, *shall send* a copy of this *Second Report and Order and Second Further Notice of Proposed Rulemaking,* including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Initial Regulatory Flexibility Analysis

22. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Second Further Notice of Proposed Rulemaking* (*Second Further Notice*). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the Second *Further Notice.* The Commission will send a copy of the *Second Further Notice,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *Second Further Notice* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

23. In the TRACED Act, Congress directed the Commission to examine whether and how to modify its policies to reduce access to numbers by potential perpetrators of illegal robocalls. Consistent with Congress's direction, the *Second Further Notice* proposes to update our rules regarding direct access to numbers by providers of interconnected VoIP services to help stem the tide of illegal robocalls. Today, widely available VoIP software allows malicious callers to make spoofed calls with minimal experience and cost. Therefore, as we continue to refine our process for allowing VoIP providers direct access to telephone numbers, we must account both for the benefits of competition and the potential risks of allowing bad actors to leverage access to numbers to harm Americans.

24. The Commission first began to allow interconnected VoIP providers to obtain numbers for customers directly from the Numbering Administrator rather than relying on a carrier partner in 2015. Based on our experience since that time, the *Second Further Notice* proposes to adopt clarifications and guardrails to better ensure that VoIP providers that obtain the benefit of direct access to numbers comply with existing legal obligations and do not facilitate illegal robocalls, pose national security risks, or evade or abuse intercarrier compensation requirements.

25. First, we seek comment on a proposal to apply the new application requirements adopted in *the Second Report and Order* to existing authorization holders whose authorizations predate the effective date of those new requirements. Second, we seek comment on whether direct access applicants should disclose a list of states in which they seek to provide initial service. Third, we seek comment on our proposal to minimize harms that may arise from bad actors that access numbering resources indirectly (*i.e.,* without a direct access authorization), by requiring the direct access authorization holders that supply them with numbering resources to obtain from them the same certifications, acknowledgments, and disclosures required of direct access applicants.

Legal Basis

26. The proposed action is authorized pursuant to sections 1, 3, 4, 201–205, 227b–1, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, 227b–1, 251, 303(r), and section 6(a) of the TRACED Act, Public Law 116–105, 6(a)(1)–(2), 133 Stat. 3274, 3277 (2019).

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

27. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

28. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent

99.9% of all businesses in the United States, which translates to 32.5 million businesses.

29. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C. 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field. Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

30. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of ''small governmental jurisdictions.'' This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments—independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments—Organizations tbls.5, 6 & 10.

31. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VoIP Providers, Non-Interconnected VoIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

32. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

33. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. Fixed Local Exchange Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VoIP Providers, Non-Interconnected VoIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

34. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers. Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority

of incumbent local exchange carriers can be considered small entities.

35. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers. Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VoIP Providers, Non-Interconnected VoIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local exchange service providers. Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

36. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 127 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 109 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

37. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, contains a size standard for a ''small cable operator,'' which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 677,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator based on the cable subscriber count established in a 2001 Public Notice. In this Public Notice, the Commission determined that there were approximately 67.7 million cable subscribers in the United States at that time using the most reliable source publicly available. We recognize that the number of cable subscribers changed since then and that the Commission has recently estimated the number of cable subscribers to traditional and telco cable operators to be approximately 49.8 million. However, because the Commission has not issued a public notice subsequent to the 2001 Subscriber Count Public Notice, the Commission still relies on the subscriber count threshold established by the 2001 Subscriber Count Public Notice for purposes of this rule. Based on industry data, only six cable system operators have more than 677,000 subscribers. Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to 76.901(e) of the Commission's rules. Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

38. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 90 providers that reported they were engaged in the provision of other toll services. Of these providers, the Commission estimates that 87 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

39. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

40. *Satellite Telecommunications.* This industry comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of

satellites or reselling satellite telecommunications.'' Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with $35 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year. Of this number, 242 firms had revenue of less than $25 million. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services. Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

41. *Local Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 207 providers that reported they were engaged in the provision of local resale services. Of these providers, the Commission estimates that 202 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

42. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers is the closest industry with an SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 457 providers that reported they were engaged in the provision of toll services. Of these providers, the Commission estimates that 438 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

43. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 62 providers that reported they were engaged in the provision of prepaid card services. Of these providers, the Commission estimates that 61 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

44. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (*e.g.* dial-up ISPs) or voice over internet protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than $25 million. Based on this data, the Commission estimates that the majority of ''All Other Telecommunications'' firms can be considered small.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

45. If adopted, the proposals in the *Second Further Notice* may create new or additional reporting or recordkeeping and/or other compliance obligations for small entities. Specifically, the *Second Further Notice* proposes to apply the new application requirements we adopt in the *Second Report and Order* to existing authorization holders whose authorizations predate the effective date of those new requirements. This proposal, if adopted, would impose new reporting and compliance obligations on existing authorization holders. The *Second Further Notice* also proposes requiring direct access applicants to disclose a list of states in which they seek to provide initial service, formalizing the existing practice of the Bureau. Additionally, the *Second Further Notice* seeks comment on a proposal to minimize harms that may

arise from bad actors that access numbering resources indirectly (*i.e.,* without a direct access authorization), by requiring the direct access authorization holders that supply them with numbering resources to obtain from them the same certifications, acknowledgments, and disclosures required of direct access applicants.

46. The Commission anticipates some of the approaches proposed to implement the requirements in the *Second Report and Order* on existing direct access authorization holders will have minimal or de minimis cost implications because many of these obligations are required to comply with existing Commission regulations. At this time however, the Commission is not in a position to determine whether, if adopted, proposals and the matters upon which we seek comment will require small entities to hire professionals to comply, and cannot quantify the cost of compliance with the potential rule changes discussed herein. We anticipate the information we receive in comments including where requested, cost and benefit analyses, will help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from the proposals and inquiries we make in the *Second Further Notice.*

Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

47. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

48. The Commission considered the possibility that burdens may be imposed on interconnected VoIP service providers (small or large) if we adopt rules that propose to strengthen requirements for existing direct access authorization holders. The Commission welcomes comments on any of the issues raised in the *Second Further Notice* that will impact small providers. In particular, the *Second Further Notice* considered and seeks comment on whether requiring existing direct access authorization holders to meet the new requirements of the *Second Report and Order* is necessary, or would be unduly burdensome, and whether the proposed 30-day timeframe for compliance is sufficient. The *Second Further Notice* also requests comment on possible burdens associated with requiring direct access applicants to provide their initial proposed service area and the states where they intend to provide service and whether better options exist. In addition, the *Second Further Notice* seeks comment on the potential burdens and impact of requiring direct access authorization holders that sell, lease, or otherwise provide telephone numbers to an interconnected VoIP provider to obtain certifications, acknowledgments, and disclosures from them as if they were applying for a direct access authorization.

49. The *Second Further Notice* proposes that authorization holders be allowed to continue to use numbers they obtained prior to submitting updated or corrected ownership information to the Bureau unless the Bureau determines that the authorization must be revoked per the formal revocation procedure we adopt in the *Second Report and Order.* Alternatively, we seek comment on whether this step is necessary to narrow the gap in our oversight ability to reach bad actors with respect to numbering resources, and other factors the Commission should consider to enforce these rules.

50. To assist in the Commission's evaluation of the economic impact on small entities, as a result of actions that have been proposed in the *Second Further Notice,* and to better explore options and alternatives, the Commission seeks comment on whether any of the burdens associated with the filing, recordkeeping and reporting requirements described above can be minimized for small entities. Additionally, the Commission seeks comment on whether any of the costs associated with any of the proposed requirements to eliminate unlawful robocalls can be alleviated for small entities. The Commission expects to more fully consider the economic impact and alternatives for small entities based on its review of the record and any comments filed in response to the *Second Further Notice* and this IRFA.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2023–23903 Filed 10–27–23; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 675

[Docket No. FTA–2023–0018]

RIN 2132–AB46

Transit Worker Hours of Service and Fatigue Risk Management

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Federal Transit Administration (FTA) is considering proposing minimum safety standards to provide protections for transit workers to obtain adequate rest thereby reducing the risk of fatigue-related safety incidents. FTA seeks public input in two areas: hours of service; and fatigue risk management programs. FTA seeks information to understand better current industry practices, priorities, requirements, and the costs and benefits of Federal requirements. The information received in response to this ANPRM will assist FTA as it considers potential regulatory requirements.

DATES: Comments should be filed by December 29, 2023.

ADDRESSES: You may send comments, identified by docket number FTA–2023–0018, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for sending comments.
- *Fax:* (202) 493–2251.
- *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery/Courier:* Dockets Operations, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *https://*

www.regulations.gov, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.* Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Ave. SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. EST, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For program matters, contact Valerie Beck, Office of Transit Safety and Oversight, FTA, telephone (202) 366–9178 or *FTAFitnessforDuty@dot.gov.* For legal matters, contact Emily Jessup, Attorney Advisor, 202–366–8907 or *emily.jessup@dot.gov.*

Office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

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I. Legal Basis for Rulemaking

Congress directed the Federal Transit Administration (FTA) to establish a comprehensive Public Transportation Safety Program in the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141) (MAP–21), which was reauthorized by the Fixing America's Surface Transportation Act (Pub. L. 114–94). The Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (Pub. L. 117–58) (IIJA), continues FTA's authority to regulate public transportation systems that receive Federal financial assistance under chapter 53 of title 49.[1] Section 5329(f)(7) of title 49, United States Code, authorizes FTA to issue rules to carry out the public transportation safety program.

Section 5329(b)(2) of title 49, United States Code, directs FTA to develop and implement a National Public Transportation Safety Plan (NSP) that includes minimum safety standards to ensure the safe operation of public transportation systems. In 2017, FTA published its first iteration of the NSP, which was intended to be FTA's primary tool for communicating with the transit industry about its safety performance.[2] Subsequently, on May 31, 2023, FTA published proposed revisions to the NSP to address new requirements in the IIJA, to continue to mature FTA's national safety program and to advance transit safety further (88 FR 34917). While the NSP currently contains only voluntary standards, FTA is considering whether to propose mandatory standards for transit worker hours of service and fatigue risk management through a new rulemaking.

II. Background

At present, there are no Federal minimum standards for hours of service (HOS) and fatigue risk management programs (FRMP) in the transit industry. HOS regulations reduce excessively long work hours, while FRMP address other workplace factors impacting fatigue, such as training and scheduling. Public transit is the only mode of transportation without such standards for its workers. The National Transportation Safety Board (NTSB) and FTA's Transit Advisory Committee for Safety (TRACS), among others, have recommended regulatory action to address safety concerns associated with transit worker fatigue. NTSB has found fatigue to be a cause and contributing factor for dozens of fatal transportation events dating back almost 40 years.

NTSB has repeatedly identified rail transit crashes in which fatigue played a role. In 2004, two Washington Metropolitan Area Transit Authority Metrorail trains collided at the Woodley Park station, resulting in the transport of about 20 people to local hospitals and causing an estimated $3.45 million in property damage. NTSB found that the train operator, who had only 8 hours off between shifts, did not have the opportunity to receive adequate sleep to be fully alert and to operate safely.[3] In 2014, a Chicago Transit Authority train collided with a bumping post at O'Hare Station and went up an escalator at the end of the track, resulting in 33 injured passengers, an injured train operator, and $11.1 million in damages. NTSB found that the train operator had worked 12 consecutive days and nights and experienced the effects of a cumulative sleep debt, which contributed to them falling asleep.[4] In 2021, two Massachusetts Bay Transportation Authority light rail vehicles collided, resulting in 24 injured passengers, 3 injured crewmembers, and about $2 million in equipment damage. The train operator told investigators that they believed they had fallen asleep.[5]

In addition to NTSB's reports, local investigations have identified fatigue-related transit crashes. For example, on March 11, 2023, a Denver Regional Transportation District (RTD) light rail train derailed, resulting in injuries to two people, the train and RTD track, and station infrastructure. RTD determined that the train operator likely fell asleep before impact.[6] In addition, the Washington Metrorail Safety Commission has identified at least two recent incidents in which a train operator appeared to fall asleep while operating the train.[7]

FTA's stakeholders have also identified fatigue as an area of concern. On July 15, 2021, FTA published a Request for Information to solicit input from the public regarding information and data on transit safety concerns that FTA should evaluate for potential action.[8] FTA received 86 comments from 78 individuals and organizations, including rail transit agencies, State Safety Oversight Agencies, labor unions, industry businesses and organizations, and private individuals. Respondents,

[1] Enacted by the Infrastructure Investment and Jobs Act. Public Law 117–58 (November 15, 2021).

[2] 82 FR 5628 (January 18, 2017).

[3] See NTSB RAR–06/01 ''Collision Between Two Washington Metropolitan Area Transit Authority Trains at the Woodley Park-Zoo/Adams Morgan Station in Washington, DC'' (November 3, 2004), available at *https://www.ntsb.gov/investigations/AccidentReports/Reports/RAR0601.pdf* (last visited May 16, 2023).

[4] See NTSB/RAR–15–01 ''Railroad Accident Report: Chicago Train Authority Train Collides with Bumping Post and Escalator at O'Hare Station'' (March 24, 2014), available at *https://www.ntsb.gov/investigations/accidentreports/reports/rar1501.pdf* (last visited April 5, 2023).

[5] See NTSB/RIR–22–15 ''Massachusetts Bay Transportation Authority Trolley Collision with Derailment'' (July 30, 2021), available at *https://www.ntsb.gov/investigations/AccidentReports/Reports/RIR2215.pdf* (last visited May 16, 2023).

[6] See Corrective Action Plan CAP01–03112023, The Regional Transportation District (RTD)—Denver (April 25, 2023), available at *https://s3.documentcloud.org/documents/23789054/042523-cap01-03112023-jeffco-station-derailment.pdf* (last visited May 17, 2023).

[7] See WMSC Commissioner Brief: W–0128—Red Signal Overrun—Largo Town Center Station—August 18, 2021 (Dec. 7, 2021), available at *https://wmsc.gov/wp-content/uploads/2021/12/W-0129-Red-Signal-Overrun-at-Largo-Town-Center-Station-August-18-2021.pdf* (last visited May 17, 2023); Final Report of Investigation A&I E19328 (June 25, 2019), available at *https://wmsc.gov/wp-content/uploads/2020/02/W-0019-Adoption-of-WMATA-Final-Report_E19326_2019_06_25-Failure-to-service-station-merged.pdf* (last visited May 17, 2023).

[8] 86 FR 37400 (July 15, 2021).

including 4 transit agencies, offered 21 comments recommending FTA develop HOS requirements.

Studies and medical research reports indicate that fatigue can deleteriously affect transportation worker performance. FTA's 2022 report, Medical Fitness for Duty and Fatigue Risk Management prepared by the Center for Urban Transportation Research (''CUTR 2022 Report''), concluded that a fatigued transit worker may be unable to effectively perform safety-critical tasks, which may lead to ''catastrophic events.'' [9] A 2017 National Safety Council report, Fatigue in Safety-Critical Industries, found that 97 percent of employers in the transportation industry state that workers feel the impact of fatigue (the highest among all the safety-critical industries surveyed), that 66 percent reported decreases in productivity due to fatigue, and that 45 percent stated they had experienced safety incidents due to fatigue-related issues.[10] In a study of railroad employees, the Federal Railroad Administration (FRA) found that exposure to fatigue raised the chance of a human factors accident by 11 to 65 percent.[11] Two research studies specifically examine transit bus operator fatigue. The first study found an increased propensity for collision involvement with an increase in weekly driving hours.[12] The second study found that most bus operators work split schedules, which use shifts that are broken by a long break, typically two or more hours. The study found that split schedules are the most fatigue-inducing schedule.[13] News reports of fatigue-related transit bus crashes also indicate, anecdotally, that transit bus operator fatigue is more prevalent than is captured in NTSB accident reports and State Safety Oversight Agency incident reports to FTA.[14] FTA does not collect fatigue data as part of its National Transit Database (NTD), and there are no Federal requirements that the influence of fatigue be recorded during safety incident investigations.

This advance notice of proposed rulemaking (ANPRM) does not make specific proposals but requests public input in two areas: (1) HOS; and (2) FRMP. FTA will use information received in response to this ANPRM to inform FTA's future decision-making on whether and how to pursue Federal regulatory action in those two areas. This ANPRM is not requesting input on other topics that may impact a transit worker's fitness for duty, including medical qualifications and prescription and over-the-counter drug use, unless they are relevant to HOS or FRMP. FTA may address those topics independently in the future.

A. Hours of Service

The goal of HOS regulations is to prevent excessively long work hours to lower the risk of fatigue and fatigue-related safety incidents. While HOS regulations alone cannot ensure that individuals receive adequate restorative rest, they can ensure that individuals have enough time off to obtain adequate rest on a daily and weekly basis. HOS regulations generally define parameters for active work time, time on duty, time off duty between shifts, work week hours, and the maximum number of consecutive workdays.

1. NTSB and TRACS Recommendations

NTSB has four open fatigue-related safety recommendations to FTA arising from a March 2014 rail collision in which a train collided with a bumping post and went up an escalator at the O'Hare Station in Chicago, Illinois.[15] NTSB determined that the probable cause of the collision was the failure of the train operator to stop the train due to falling asleep as a result of fatigue. Safety Recommendation R–15–019 recommends FTA establish regulations that set HOS limitations, provide predictable work and rest schedules, and consider circadian rhythms and sleep and rest requirements. The other three recommendations are discussed in the Fatigue Risk Management section below.

In October 2014, FTA tasked TRACS with developing recommendations on the elements that should comprise a Safety Management System (SMS) approach to a fatigue management program. TRACS found that transit worker fatigue is a serious problem and recommended in 2015 that FTA develop a Federal regulation mandating minimum HOS requirements as its first priority.[16] TRACS issued a report which noted that the committee ''feels strongly that HOS is a fundamental, initial pillar of an SMS framework and should be implemented by FTA as soon as possible.'' In the same report, TRACS recommended that FTA's HOS regulations apply to employees involved with moving revenue and maintenance equipment, including bus and rail operators, dispatchers, conductors, and controllers. TRACS further recommended a maximum of 12 on-duty hours over a maximum duty tour of 14 hours, including any periods of interim release, with a minimum of 10 consecutive hours off-duty between shifts, and a maximum number of 6 consecutive working days.

TRACS considered whether FTA should identify a maximum number of on-duty hours over the six consecutive working days. In its report, TRACS noted that experts from the Volpe National Transportation Systems Center recommended a limit of 60 on-duty hours over 6 consecutive working days, which would allow for a 10-hour workday, 9 hours of sleep, a 2-hour commute, and 5 hours of personal time (*e.g.,* eating, showering, and family time). TRACS found that some agencies expressed concern about the need to hire and train new employees to achieve the staffing levels necessary to operate under the recommended HOS requirements, which could result in managing large numbers of inexperienced employees. The TRACS report noted that the committee considered anecdotal evidence from one

[9] See FTA Report No. 0223 ''FTA Standards Development Program: Medical Fitness for Duty and Fatigue Risk Management'' (June 2022), available at *https://www.transit.dot.gov/sites/fta.dot.gov/files/2022-07/FTA-Report-No-0223.pdf* (last visited April 5, 2023).

[10] See National Safety Council Report ''Fatigue in Safety-Critical Industries: Impact, Risks & Recommendations'' (2017), available at: *https://nsccdn.azureedge.net/nsc.org/media/site-media/docs/fatigue/part3-fatigue-survey-report.pdf* (last visited June 22, 2023).

[11] See Federal Railroad Administration, ''Fatigue Status of the U.S. Railroad Industry'' (2013), available at *https://railroads.dot.gov/sites/fra.dot.gov/files/fra_net/2929/TR_Fatigue%20Status%20US%20Railroad%20Industry_CO%2020121119_20130221_FINAL.pdf* (last visited April 21, 2023).

[12] See Sando, T., Mtoi, E., & Moses, R., ''Potential Causes of Driver Fatigue: A Study on Transit Bus Operators in Florida,'' Transportation Research Board of the National Academies' 2011 90th Annual Meeting, paper no. 11–3398, November 2010, available in the public docket for this rulemaking.

[13] See Sando, T., Angel, M., Mtoi, E., & Moses, R., ''Analysis of the Relationship Between Operator Cumulative Driving Hours and Involvement in Preventable Collisions,'' Transportation Research Board of the National Academies' 2011 90th Annual Meeting, paper no. 11–4165, November 2010, available in the public docket for this rulemaking.

[14] See, *e.g.,* ''New Video released in 2021 Pace bus crash that killed woman after driver fell asleep at the wheel'' (March 27, 2023), available at *https://www.fox32chicago.com/news/pace-to-pay-13m-settlement-after-bus-driver-fell-asleep-at-wheel-causing-crash-that-killed-68-year-old-woman* (last visited May 17, 2023); ''Sleepy SMART bus driver who caused crash gets 93 days in jail'' (May 4, 2015), available at *https://www.clickondetroit.com/news/2015/05/04/sleepy-smart-bus-driver-who-caused-crash-gets-93-days-in-jail/* (last visited May 17, 2023).

[15] See NTSB/RAR–15–01 ''Railroad Accident Report: Chicago Train Authority Train Collides with Bumping Post and Escalator at O'Hare Station'' (March 24, 2014), available at *https://www.ntsb.gov/investigations/accidentreports/reports/rar1501.pdf* (last visited April 5, 2023).

[16] See TRACS Report 14–02, ''Establishing a Fatigue Management Program for the Bus and Rail Transit Industry'' (July 30, 2015), available at *https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/TRACS_Fatigue_Report_14-02_Final_(2).pdf* (last visited April 5, 2023).

agency that despite initial resistance from operators to give up overtime, employees came to cite an overall increase in quality of life from the agency's adoption of a 60-hour maximum limit. TRACS members did not reach a consensus on the issue of including a maximum number of hours over six days and therefore did not make a recommendation in this regard to FTA.

2. Consensus Standards

Through its bus and rail working groups, the American Public Transportation Association (APTA) develops voluntary, consensus-based industry operating and maintenance standards. APTA's consensus HOS standards for train operators limit maximum operating hours to 12 hours, with a maximum duty day of 16 hours. APTA's consensus standards suggest that train operators have a minimum off-duty time of 10 hours and a maximum period of 7 consecutive workdays. APTA's voluntary standards do not include a maximum number of on-duty hours over the 7 consecutive workdays.[17]

3. Federal and State Regulations

The Federal Motor Carrier Safety Administration (FMCSA), FRA, Federal Aviation Administration, and United States Coast Guard prescribe HOS limitations applicable to their regulated industries, as summarized in detail in the CUTR 2022 Report.[18] Of particular relevance to transit operators, FMCSA prohibits drivers of passenger-carrying commercial motor vehicles from driving more than 10 hours following 8 consecutive hours off duty. Such drivers also may not drive after being on duty for 15 hours following 8 consecutive hours off duty. FMCSA limits on-duty time to no more than 60 hours over 7 consecutive days for motor carriers that do not operate every day of the week, and to no more than 70 hours over eight consecutive days for motor carriers that operate every day of the week.[19] FMCSA's HOS requirements do not apply to transit buses operated by any political subdivision of a State.[20] Transit buses operated by contractors that operate under their own USDOT registration, however, may be subject to FMCSA's requirements if they operate in interstate commerce. FRA requires that before a train employee engaged in commuter or intercity rail passenger transportation remains or goes on-duty the employee must have had at least 8 consecutive hours off duty during the prior 24 hours or at least 10 consecutive hours off duty after working 12 consecutive hours. Those train employees may not spend more than 14 consecutive calendar days on duty, although there are some specific, additional limitations for train employees who engage in service during the hours of 8 p.m.–3:59 a.m. (known as ''Type II'' schedules).[21] Train employees working at least one Type II schedule may not spend more than 6 consecutive calendar days on duty. FRA HOS regulations for passenger train crews also require a commuter or intercity passenger railroad to evaluate Type II schedules using a validated biomathematical model of human performance and fatigue determine whether train employees may be at increased risk of fatigue. Railroads must develop a fatigue risk mitigation plan to reduce the risk of fatigue in those schedules having an increased risk for fatigue.[22] Train crews must also receive initial and refresher training on fatigue awareness and other topics related to understanding and mitigating fatigue as part of HOS requirements.[23]

In addition to Federal regulations, a number of States have their own State HOS limitations that apply to bus and rail operators.[24] FTA's understanding, however, is that State HOS limitations do not apply to transit workers in most States. Some States and transit agencies also have policy requirements, not codified in State law, that include HOS limitations.

B. Fatigue Risk Management Programs

HOS limitations do not account for other factors that contribute to fatigue, including work schedules; environmental factors, such as temperature and humidity; circadian rhythms; and the effects of the type of task being performed, such as the level of monotony or stress. FRMPs complement HOS requirements by addressing various workplace factors that contribute to fatigue to reduce the potential for fatigue-related safety incidents. An effective FRMP implements processes to measure, manage, and mitigate fatigue risk in a specific operational setting.

1. NTSB and TRACS Recommendations

As a result of its March 2014 investigation of the Chicago train collision, NTSB issued three recommendations to FTA relating to fatigue risk management. Safety Recommendation R–15–018 recommends FTA develop and implement a work scheduling program for rail transit agencies that incorporates the management of fatigue risk. Safety Recommendations R–15–020 and R–15–021 focus on identifying training and certification necessary for work schedulers and training personnel who are responsible for developing rail transit employee work schedules.

TRACS made several recommendations to FTA relating to FRMP requirements in its 2015 report.[25] TRACS noted that shift scheduling is an essential part of managing fatigue. TRACS recommended that FTA require transit agencies to provide the necessary training for their work schedulers to understand elements of fatigue science, including circadian rhythms. In addition, TRACS recommended that agencies provide mandatory fatigue awareness training for all safety-sensitive personnel, including bus and train operators, conductors, tower operators, starters, inspectors, yard persons, shift schedulers, maintenance-of-way employees, signal and electric traction employees, mechanical department employees, dispatchers, and supervisors, and consider fatigue as a potential underlying factor in all safety investigations of incidents and accidents. TRACS also recommended that FTA require transit agencies to collect and track data on fatigue performance measures to evaluate the success of their FRMPs.

2. Consensus Standards

APTA's consensus standards for rail transit system fatigue management programs establish formal steps to develop and implement an organization's fatigue management program for operators, controllers, and any other safety-critical personnel.[26]

[17] See APTA RT–OP–S–015–09 Rev 1, ''Train Operator Hours-of-Service Requirements'' (June 7, 2019), available at *https://www.apta.com/wp-content/uploads/APTA-RT-OP-S-015-09_Rev_-1-1.pdf* (last visited April 5, 2023).

[18] See FTA Report No. 0223 ''FTA Standards Development Program: Medical Fitness for Duty and Fatigue Risk Management'' (June 2022), available at *https://www.transit.dot.gov/sites/fta.dot.gov/files/2022-07/FTA-Report-No-0223.pdf* (last visited April 5, 2023).

[19] 49 CFR 395.5 (January 3, 2017).

[20] 49 CFR 390.3T(f)(2) (November 11, 2021).

[21] 49 CFR 228.405 (January 3, 2017).

[22] 49 CFR 228.407 (January 3, 2017).

[23] 49 CFR 228.411 (January 3, 2017).

[24] See FTA Report No. 0223 ''FTA Standards Development Program: Medical Fitness for Duty and Fatigue Risk Management'' (June 2022), available at *https://www.transit.dot.gov/sites/fta.dot.gov/files/2022-07/FTA-Report-No-0223.pdf* (last visited April 5, 2023).

[25] See TRACS Report 14–02, ''Establishing a Fatigue Management Program for the Bus and Rail Transit Industry'' (July 30, 2015), available at *https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/TRACS_Fatigue_Report_14-02_Final_(2).pdf* (last visited April 5, 2023).

[26] See APTA RT–OP–S–23–17 ''Fatigue Management Program Requirements'' (April 7,

APTA's standards include the establishment of a fatigue management program steering committee and a fatigue management policy with core program elements. APTA's standards also provide that agencies must consider fatigue as a line of inquiry when conducting accident investigations or developing schedules and that agencies must collect and assess fatigue-related data.

3. Federal Regulations

In 2022, FRA promulgated regulations that require railroads that operate commuter and intercity passenger service to develop and implement an FRMP.[27] Pursuant to those regulations, a railroad must develop, and FRA must approve, an FRMP that contains the goals of the program; describes processes to conduct a fatigue risk assessment, identify mitigations, and monitor identified fatigue-related hazards; and describes how railroads plan to implement an FRMP. At a minimum, when conducting a risk assessment, a railroad must evaluate the general health and medical conditions that can affect the fatigue levels, scheduling issues that can impact quality and quantity of sleep, and characteristics of each job category of safety-related railroad employees that can affect fatigue levels.

III. Comments Sought

FTA seeks comments, information, and data from the public in response to this ANPRM. We request that commenters address their comments specifically to the enumerated list of issues below, and number their comments to correspond to each issue. In the following questions, FTA uses the term ''transit worker'' to indicate any employee, contractor, or volunteer working on behalf of a public transit agency. This includes vehicle operators, dispatchers, maintenance workers, managerial staff, and all other workers whose information could aid the development of a future Hours of Service and Fatigue Risk Management rule. Please indicate which worker groups you are addressing when commenting.

A. Regulatory Options

1. Generally, why should or should not FTA adopt mandatory Federal hours of service (HOS) and fatigue risk management programs (FRMP) requirements for transit workers?

2. What aspects of transit operations should FTA consider if it develops Federal HOS and FRMP requirements for transit workers? Are there unique characteristics of transit operations, as compared to motor carrier and railroad operations, that FTA should consider when evaluating existing FMCSA and FRA requirements? How should FTA consider differences in urban and rural operating environments and agency size?

3. Specifically, what are the reasons you would or would not support any of the following options? What alternatives should FTA consider? Please explain.

a. The TRACS recommendation for a maximum of 12 on-duty hours over a maximum duty tour of 14 hours, with a minimum of 10 consecutive hours off-duty between shifts, and a maximum of 6 working days.

b. The Volpe recommendation to TRACS for a limit of 60 on-duty hours over 6 consecutive working days.

c. The APTA train operator standard of a maximum time of 12 operating hours, a maximum duty day of 16 hours, a minimum off-duty time of 10 hours, and a maximum period of l7 consecutive workdays. Is there a likely increase in safety risk by adopting the APTA standard for a maximum duty day of 16 rather than 14 hours? How would a 16-hour duty day change transit agency operations as compared to a 14-hour duty day?

d. For transit bus operators, FMCSA's passenger carrier HOS requirements of a 15-hour on-duty limit and a 10-hour driving limit following 8 consecutive hours off-duty, and no more than 70 hours over 8 consecutive days. Could adoption of different HOS requirements for transit bus drivers than FMCSA's passenger carrier requirements cause confusion for drivers?

e. A requirement for transit agencies to develop and implement an FRMP. If transit agencies were required to develop and implement an FRMP, what elements should the FRMP include? Should transit agencies have primary responsibility for developing the FRMP? For agencies that have a Safety Committee, should the Safety Committee have a role in developing or approving the FRMP?

4. What specific qualities of workers' regular tasks should FTA consider to make them subject to HOS requirements? Does the definition of ''safety-sensitive function'' in 49 CFR 655.4 include all categories of employees who FTA should consider for HOS requirements? Are there employees who perform safety-sensitive functions who should not be subject to HOS requirements?

5. Would you support a single HOS standard that applies across all transit modes subject to safety regulation by FTA? Or would you support multiple HOS standards based on the varying characteristics of different transit modes, for example, one set of standards for bus operators and a different set of standards for rail operators? Please explain.

6. Should shift schedulers who create work schedules have minimum certification and training requirements? If so, please explain what minimum requirements for training and/or certification FTA should consider establishing.

B. Benefits and Costs

7. How would changes in hours, as a result of new HOS requirements, impact worker health and safety?

8. Do you have information on any HOS research FTA should consider as part of this or future rulemakings?

9. How would changes in hours, as a result of HOS requirements, impact transit agency operations (*e.g.,* their ability to fully staff service)? How would changes in hours impact customers? What costs would agencies incur to change their operations and ensure that workers comply with the requirements?

C. Fatigue Data Collection

10. Is the prevalence of fatigue among transit workers and its safety implications tracked or measured? Please explain. Do you have any data on the prevalence or impact of fatigue among transit workers?

11. As a standard process, do investigations consider whether fatigue was a probable cause or contributing factor in a transit safety event? If so, please explain. How are such data recorded or tracked? Do you have any data on transit safety events in which fatigue was determined to be a probable cause or contributing factor?

12. Would you support requirements for State Safety Oversight Agencies in investigating the potential role of fatigue in rail safety events and near misses? If so, what requirements would you support? What would be the burdens to the industry? What would be the benefits?

13. Would you support routine data collection through the National Transit Database on whether an incident was fatigue related? What additional data would help assess national trend analyses on the safety impacts of fatigue? For example, FTA could update National Transit Database reporting for major safety events to include elements, such as the number of hours the

2017), available at *https://www.apta.com/wp-content/uploads/Standards_Documents/APTA-RT-OP-S-023-17.pdf* (last visited April 5, 2023).

[27] 87 FR 35660 (June 13, 2022), codified at 49 CFR part 270 *et seq.*

operator was on duty, the end time of the operator's previous shift before the current shift, and the number of consecutive days the operator was on duty. Which of these would be useful? Would other data elements be useful? What barriers might impact the collection of additional data? Would this data be useful for both bus and rail events?

14. What would the burdens to the industry be if FTA instituted new requirements to record transit worker fatigue data in the National Transit Database? What would be the benefits to the industry of having such worker fatigue data for transit safety events?

15. FTA recently began collecting annual counts of fatal bus collisions from transit operators that are not currently required to file major safety event reports. These are primarily operators in rural areas, or operators with fewer than 30 vehicles in peak service. Some of these fatal bus collisions may be fatigue-related. Should FTA consider gathering data on fatigue from these events?

D. Current Hours of Service and Fatigue Risk Management Policies

16. Do you have information or data on whether and how transit agencies are currently using their documented safety risk management processes to assess the associated safety risk and, based on the results of the safety risk assessment, identify safety risk mitigations or strategies as necessary to address the safety risk of transit worker fatigue through their Agency Safety Plan?

17. Do you have information or data on existing State or local HOS or FRMP requirements that apply to transit workers?

a. To which transit agencies do they apply?

b. To which modes do they apply?

c. To which classifications of workers do they apply (*e.g.,* operators, maintenance, dispatchers)?

d. Are waivers allowed to accommodate exigent or other circumstances? Please explain.

e. Please describe the HOS and FRMP requirements (*e.g.,* hours restrictions, training requirements, designated breaks, and rest areas).

f. Has the effectiveness of the HOS or FRMP requirements been evaluated? How were they evaluated and what were the results?

g. Are existing HOS requirements part of collective bargaining agreements? If so, what are the details? If not, how would HOS or FRMP requirements interact with existing collective bargaining agreements?

18. Is transit worker secondary employment tracked? If so, how? Are secondary employment hours tracked in addition to primary employment? Do transit agencies face any limitations on their ability to track secondary employment?

19. Do you have information on transit worker schedules for operators, maintenance workers, control center workers, and other workers?

a. How long are shifts? How long are overtime shifts?

b. What are the non-operational job responsibilities of bus and rail operators? How much time do workers spend on-task, for example, operating a vehicle or performing maintenance work, as compared to other work, such as office administrative work?

c. How many breaks do workers get? How long are the breaks?

d. How much off-duty time do workers get?

e. What split-shift policies are used? What is their service span on their longest service days? Which workers work split shifts?

f. How consistent are transit workers' shift schedules? Are assigned service hours stable week-to-week? Month-to-month? Year-to-year?

20. What fatigue-related factors are considered when developing bus and rail schedules? Why are these factors considered?

21. Do you have information on transit agency use of other safety enhancing policies or technology solutions that FTA should consider?

IV. Regulatory Analyses and Notices

Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

Executive Order 12866 (''Regulatory Planning and Review''), as supplemented by Executive Order 13563 (''Improving Regulation and Regulatory Review''), and the Executive order on Modernizing Regulatory Review, directs Federal agencies to assess the benefits and costs of regulations, to select regulatory approaches that maximize net benefits when possible, and to consider economic, environmental, and distributional effects. It also directs the Office of Management and Budget (OMB) to review significant regulatory actions, including regulations with annual economic effects of $200 million or more. The agency has considered the impact of this ANPRM under these Executive orders and the Department of Transportation's regulatory policies and procedures. In this ANPRM, the agency requests comments that would help FTA assess and make judgments on the benefits, costs, and other impacts, of transit worker fitness for duty standards. FTA believes that a notice relating to new requirements for hours of service and fatigue risk management programs may generate 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 on Modernizing Regulatory Review, and therefore is significant.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This ANPRM would not establish any new information collection requirements.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, 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.*

National Environmental Policy Act

Federal agencies are required to adopt implementing procedures for the National Environmental Policy Act (NEPA) that establish specific criteria for, and identification of, three classes of actions: (1) Those that normally require preparation of an Environmental Impact Statement, (2) those that normally require preparation of an Environmental Assessment, and (3) those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). This ANPRM qualifies for categorical exclusions under 23 CFR 771.118(c)(4) (planning and administrative activities that do not involve or lead directly to construction). FTA has evaluated whether the ANPRM will involve unusual or extraordinary circumstances and has determined that it will not.

Executive Order 12630 (Taking of Private Property)

FTA has analyzed this ANPRM under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. FTA does not believe this ANPRM affects a taking of private property or otherwise has taking

implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

This ANRPM meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

FTA has analyzed this ANPRM under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. FTA certifies that this action will not cause an environmental risk to health or safety that might disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

FTA has analyzed this ANPRM under Executive Order 13175, dated November 6, 2000, and believes that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

FTA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FTA has determined that this action is not a significant energy action under that order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Executive Order 12898 (Environmental Justice)

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations) and DOT Order 5610.2(a) (77 FR 27534, May 10, 2012) (*https://www.transportation.gov/transportation-policy/environmental-justice/department-transportation-order-56102a*) require DOT agencies to achieve Environmental Justice (EJ) as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority and low-income populations. All DOT agencies must address compliance with Executive Order 12898 and the DOT Order in all rulemaking activities. On August 15, 2012, FTA's Circular 4703.1 became effective, which contains guidance for recipients of FTA financial assistance to incorporate EJ principles into plans, projects, and activities (*https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/environmental-justice-policy-guidance-federal-transit*).

FTA has evaluated this action under the Executive order, the DOT Order, and the FTA Circular and FTA has determined that this action will not cause disproportionately high and adverse human health and environmental effects on minority or low-income populations.

Regulation Identifier Number

A Regulation Identifier Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this rulemaking with the Unified Agenda.

List of Subjects in 49 CFR Part 675

Mass transportation, Safety.

(Authority: 49 U.S.C. 5329; 49 CFR 1.91)

Nuria I. Fernandez,

Administrator.

[FR Doc. 2023–23916 Filed 10–27–23; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 231023–0251]

RIN 0648–BL79

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Naval Magazine Indian Island Ammunition Wharf Maintenance and Pile Replacement Project, Puget Sound, Washington

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to the maintenance and pile replacement construction activities at the Ammunition Wharf at Naval Magazine (NAVMAG) Indian Island in Puget Sound, Washington, over the course of 5 years (2024–2029). As required by the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations to govern that take, and requests comments on the proposed regulations. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than November 29, 2023.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2023–0122, by the following method:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2023–0122 in the Search box, click the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), 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). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability of Navy's Application, Marine Mammal Monitoring Plan, and List of References

A copy of the Navy's application, monitoring plan, and any supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://*

www.fisheries.noaa.gov/action/incidental-take-authorization-taking-marine-mammals-incidental-naval-magazine-indian-island. In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Purpose and Need for Regulatory Action

This proposed rule, if adopted, would establish a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) to authorize, for a five-year period (2024–2029), take of marine mammals incidental to the Navy's construction activities associated with maintenance and pile replacement at the Ammunition Wharf at NAVMAG Indian Island.

We received an application from the Navy requesting 5-year regulations and authorization to take multiple species of marine mammals. Take would occur by Level A and Level B harassment incidental to impact and vibratory pile driving. Please see Background below for definitions of harassment.

Legal Authority for the Proposed Action

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region for up to 5 years if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity and other means of effecting the ''least practicable adverse impact'' on the affected species or stocks and their habitat (see the discussion below in the Proposed Mitigation section), as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart R provide the legal basis for issuing this proposed rule containing 5-year regulations, and for any subsequent letters of authorization (LOAs). As directed by this legal authority, this proposed rule contains mitigation, monitoring, and reporting requirements.

Summary of Major Provisions Within the Proposed Rule

The following is a summary of the major provisions of this proposed rule regarding Navy construction activities. These provisions include measures requiring:

- monitoring of the construction areas to detect the presence of marine mammals before beginning construction activities;
- Shutdown of construction activities under certain circumstances to avoid injury of marine mammals;
- Soft start for impact pile driving to allow marine mammals the opportunity to leave the area prior to beginning impact pile driving at full power; and
- Use of bubble curtains to attenuate sound levels when impact driving steel piles.

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (as subsequently delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made, regulations are issued, and notice is provided to the public.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the promulgation of regulations and subsequent issuance of an incidental take authorization with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed rule qualifies to be categorically excluded from further NEPA review.

Information in the Navy's application and this document collectively provide the environmental information related to proposed issuance of these regulations and subsequent incidental take authorization for public review and comment. We will review all comments submitted in response to this notice of proposed rulemaking prior to concluding our NEPA process and prior to making a final decision on the request for incidental take authorization.

Summary of Request

In May 2021, NMFS received a request from the Navy requesting authorization to take small numbers of eight species of marine mammals incidental to construction activities at the Ammunition Wharf at NAVMAG Indian Island. The Navy has requested regulations that would establish a process for authorizing such take via an LOA. NMFS reviewed the Navy's application, and sent initial questions regarding the application to the Navy on October 5, 2021. The Navy addressed the questions and submitted a revised LOA application on March 24, 2022. After additional questions were sent by NMFS, the Navy submitted another revised application on May 13, 2022, and the revised application was deemed adequate and complete on June 9, 2022. The application was published for public review and comment on August 4, 2022 (87 FR 47722). Following publication of the application, the Navy delayed the project start date by 1 year.

The Navy requests authorization to take eight species of marine mammals by Level B harassment. They have also requested authorization to take one of these species by Level A harassment. Neither the Navy nor NMFS expects serious injury or mortality to result from this activity. The proposed regulations would be valid for 5 years (2024–2029).

Description of Proposed Activity

Overview

The Navy proposes to replace defective structural concrete and fender piles as well as conduct maintenance and repair activities on the Ammunition Wharf at NAVMAG Indian Island. Maintaining this wharf structure is vital to sustaining the Navy's mission and ensuring readiness. The Navy proposes to replace up to 118 structural concrete piles or fender piles, conduct maintenance, and engage in repair activities over a 7-year period on the Ammunition Wharf. However, the proposed LOA would only be valid for 5 years. The Navy plans to conduct necessary work, including impact and vibratory pile driving, to replace and maintain the wharf structure. Under the proposed 5-year LOA, up to 110 structurally unsound structural piles or fender piles would be replaced. Structural concrete piles would be replaced with 24-inch concrete piles and old fender piles would be replaced with 14-inch steel H piles or 18.75-inch composite piles. Up to eight steel piles may also be installed in addition to the structural concrete piles if necessary. The 2 years following the expiration of the LOA would consist of removal and installation of concrete piles, and maintenance and repair work. The Navy would request incidental take authorizations as necessary for the final 2 years of work.

Dates and Duration

The proposed regulations would be valid for a period of 5 years from October 1, 2024, until September 30, 2029. All pile driving would be conducted during the prescribed in-water work window of October 1 to January 15 to avoid conducting activities when juvenile salmonids are most likely to be present. A conservative estimate of annual pile driving days over the duration of the 5-year LOA based on the assumption that pile driving rates would be relatively slow would be approximately 24 days per year with up to 22 concrete piles or fender piles, and up to 2 steel piles installed per year. Conservatively, one concrete pile would be installed per day using jetting followed by proofing with an impact hammer. There may be extra days for additional proofing or weather/equipment delays. Actual daily production rates may be higher (often two piles are installed in a day), resulting in fewer actual pile driving days.

Specific Geographic Region

NAVMAG Indian Island is located near Port Hadlock in Jefferson County, Washington, southeast of Port Townsend, at the northeast corner of the Olympic Peninsula (Figure 1). The island is approximately 8 kilometers (km) long and 2 km wide, and comprises approximately 11 km square (km^2). NAVMAG Indian Island is located between Port Townsend Bay and Kilisut Harbor. The Federal Government owns the island and provides an easement on a small portion of the southern extent of the island to Washington State Department of Transportation for access to Marrowstone Island along State Route 116. NAVMAG Indian Island is the West Coast ammunition ordnance storage center supporting the U.S. Navy Pacific Fleet.

NAVMAG Indian Island occupies approximately 19 km of shoreline within Port Townsend Bay. There are two marine structures located at NAVMAG Indian Island, the Ammunition Wharf and the Small Craft Pier, but only the Ammunition Wharf activities are addressed in this proposed rule. Its primary mission is to load, offload, and provide storage and logistics management for ordnance used on Navy vessels.

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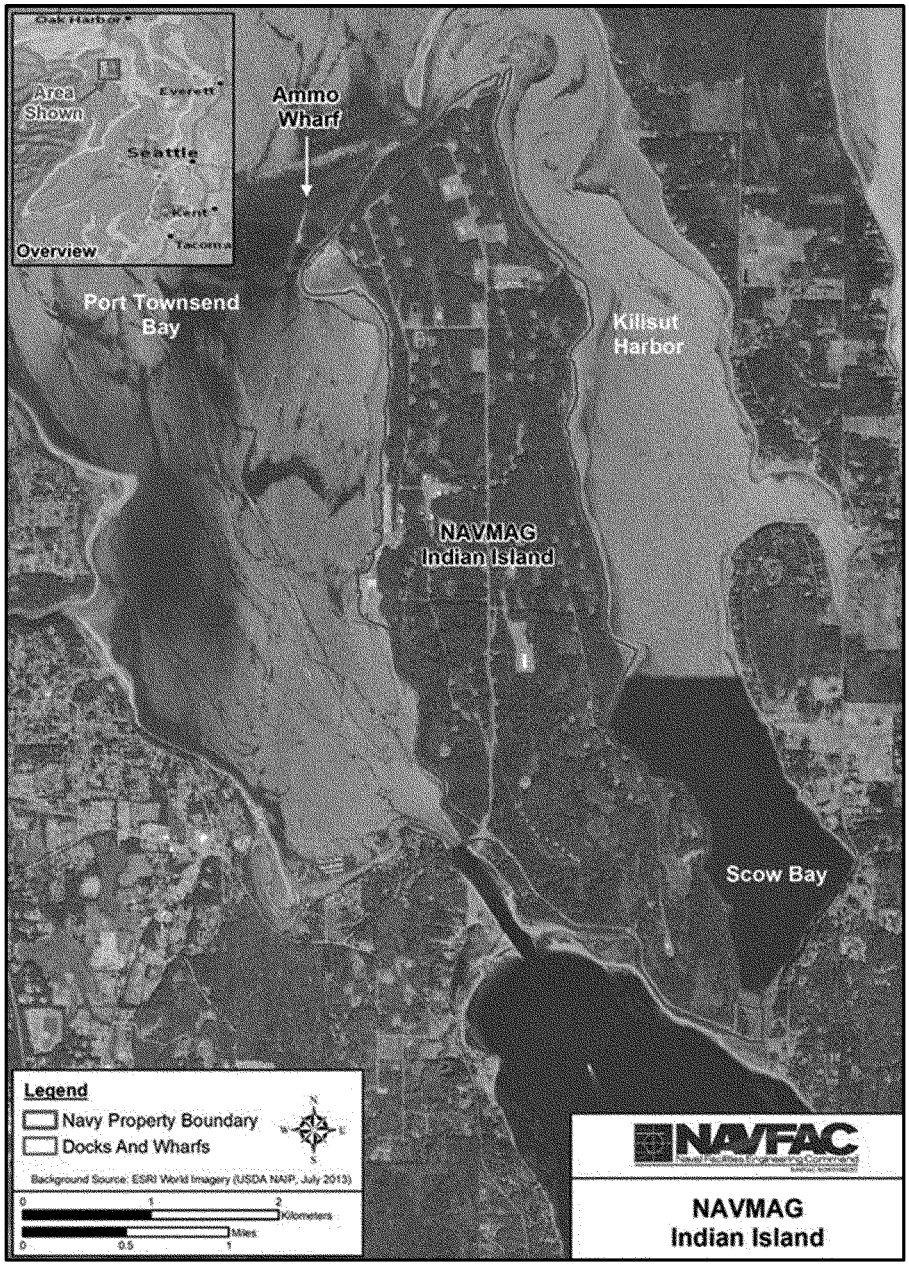

Figure 1 -- Location of Ammunition (Ammo) Wharf on Naval Magazine Indian Island

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Detailed Description of the Specified Activity

NAVMAG Indian Island is the West Coast ammunition ordnance storage center supporting the U.S. Navy Pacific Fleet. Its primary mission is to load, offload, and provide storage and logistics management for ordnance used on Navy vessels. Construction of the Ammunition Wharf was completed in 1979, and there are a total of 1,783 piles in the Ammunition Wharf: 1,391 structural piles, 306 fender piles and 86 Operations Building piles.

The Ammunition Wharf was originally constructed using precast concrete piles. As a result of the steam curing process used at that time, an unknown quantity of piling is susceptible to a potentially catastrophic condition called Delayed Ettringite Formation (DEF). DEF is a result of high early temperatures in the concrete, which prevents the normal formation of ettringite. DEF occurs rapidly and without warning.

The Navy schedules inspections on waterfront facilities that usually occur every 3 years, but due to DEF at the Ammunition Wharf, inspections for that structure occur every two years. Based on the most recent inspection in 2021, there are 161 piles (158 under Ammunition Pier and three under the Operations Building at Ammunition Wharf) with some appreciable level of DEF damage (most or all of those piles will be replaced). More piles with DEF damage may be detected and therefore may need to be replaced over the duration of the LOA.

Table 1 shows the details of the proposed construction activities which are described below in greater detail.

TABLE 1—PROJECT COMPONENTS FOR PILE REPLACEMENT FOR THE AMMUNITION WHARF

Wharf structure (in-water construction)	Construction details
Total Piles	Up to 118 piles installed over 5 years (including up to eight steel piles, with the remainder concrete).
Quantity of concrete piles (24-inch)	Up to 22 per year over 5 years.
Quantity of permanent steel piles (36-inch)	Up to 2 per year (Maximum of 8) over 5 years (Currently no steel pile installation is planned, installation would depend on future pile inspections).
Pile Removal Method	Cutting.
Pile Installation Method	Jetting and impact driving of concrete piles; Vibratory and impact driving of steel piles. No simultaneous pile driving will occur.
Quantity of piles above −30 feet MLLW	All.
Maximum number of piles driven per day (approximately)	Two concrete piles per day. One steel pile per day.
Total duration of impact pile driving	No more than 45 minutes per day (mean = 10 minutes for concrete piles; 15 minutes for steel piles).
Maximum duration of vibratory pile driving	No more than 30 minutes (mean = 10 minutes per steel pile).
Marine Construction Duration (including in-water restrictions).	3.5 months per year (In water work window: October 1–January 15).

Removal of Existing Piles

After demolition of the deck portions of the wharf located above the waterline, three methods of pile removal (cutting/chipping, clamshell removal, and direct pull) may be used. However, hydraulic cutting will be the primary method of pile removal due to working under the wharf and the DEF damage to the piles. In some cases, piles may be cut at or below the mudline, with the below-mudline portion of the pile left in place. None of these pile removal activities are anticipated to result in take of marine mammals; therefore, they are not discussed further beyond the brief elaboration on jetting and pile cutting provided below.

Pile Installation

Three methods of pile installation for concrete and steel piles may be used (vibratory, jetting, and impact) depending on the type of pile and site conditions. Only one pile will be installed at a time; no simultaneous pile driving will occur. These methods are described below.

The primary methods of concrete pile installation would be water jetting to within 3 meters (m) of final depth and then impact pile driving to set or proof the final 3 m. Water jetting aids the penetration of a pile into a dense sand or sandy gravel stratum. Water jetting utilizes a carefully directed and pressurized flow of water at the pile tip, which disturbs a ring of soils directly beneath it. The jetting technique liquefies the soils at the pile tip during pile placement, reducing the friction and interlocking between adjacent sub grade soil particles around the water jet. For load-bearing structures, an impact hammer is typically required to strike a pile a number of times to ensure it has met the load-bearing specifications; this is referred to as ''proofing.'' Load-bearing piles installed with water jetting would still need to be proofed with an impact pile driver.

A vibratory hammer may be used to install the structural steel piles and fender piles. The primary method of pile installation for steel piles would be vibratory to within 3 m of final depth and then impact pile driving to set or proof the final 3 m. The vibratory pile driver method is a technique that may be used in pile installation where the substrate allows. Use of this technique may be limited in very hard substrates. This process begins by placing a choker cable around a pile and lifting it into vertical position with a crane. The pile is then lowered into position and set in place at the mudline. The pile is held steady while the vibratory driver installs the pile to the required tip elevation. In some substrates, a vibratory driver may be unable to advance a pile until it reaches the required depth. In these cases, an impact hammer may be used to advance the pile to the required depth.

Impact hammers may be used to proof concrete piles that have been jetted to depth or steel piles that have been driven using the vibratory method. Proofing involves impact pile driving to determine if the pile has been driven to the proper load-bearing specifications within the substrate. Proofing of concrete piles at the Ammunition Wharf in 2015 and 2016 required 200–600 strikes per pile to complete (Navy, 2016).

Impact hammers have a heavy piston that moves up and down striking the top of the pile and driving the pile into the substrate from the downward force of the hammer. Impact hammer pile proofing can typically take a minute or less to 30 minutes depending on pile type, pile size, and conditions (*i.e.,* bedrock, loose soils, *etc.*) to reach the required tip elevation.

The Navy states that piles will be advanced to the extent practicable with a vibratory driver and only impact driven when required for proofing or when a pile cannot be advanced with a vibratory driver due to hard substrate conditions.

Existing piles that are structurally sound may require additional repair activities. Such activities could include wetwell repair; recoating of piles and mooring fittings; installation or replacement of passive cathode protection systems; repair and replacement of pile caps; concrete repair; mooring foundation and substructure repair; replacement of components (*e.g.* hand rails, safety ladders, light poles); and rewrapping or replacement of steel cable straps on dolphins. These repairs are described in greater detail in the Navy's application but would not result in the take of marine mammals and are not discussed further.

Operation of the following equipment types is not reasonably expected to result in take of marine mammals and will not be discussed further beyond the brief summaries provided below:

- Jetting produces much lower sound levels (approximately 147.5 decibel (dB) Root Mean Square (RMS); NAVFAC SW, 2020) than vibratory pile driving 166 dB RMS (Navy, 2015). The sounds produced by jetting are of similar frequencies to the sounds produced by vessels, and are anticipated to diminish to background noise levels (or be masked by background noise levels) in Port Townsend Bay.
- Hydraulic cutting would be used be used to assist with removal of piles. Similar to jetting, the sounds produced by cutting are of similar frequencies to the sounds produced by vessels (NAVFAC SW, 2020), and are anticipated to diminish to background noise levels (or be masked by

background noise levels) in Port Townsend Bay relatively close to the Ammunition Wharf. Cutting of 24-inch concrete piles also produces much lower sound levels (approximately 141.4 decibel (dB) Root Mean Square (RMS); NAVFAC SW, 2020) than vibratory pile driving 166 dB RMS (Navy, 2015).

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

To characterize potential species occurrence, the Navy's application utilized density information available for Puget Sound, and recent research and survey information conducted on-site or in Puget Sound. The Navy also discussed species occurrence with local species experts and reviewed incidental sighting reports from the Orca Network (Whidbey Island, WA) and Center for Whale Research (Friday Harbor, WA) for verified or reasonably verified species presence, as well as information on seasonal, intermittent, or unusual species occurrences.

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is expected to occur, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All stocks managed under the MMPA in this region are assessed in NMFS' U.S. Pacific Marine Mammal Stock Assessment Report. All values presented in Table 2 are the most recent available at the time of publication and are available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 2—MARINE MAMMAL SPECIES [4] LIKELY TO OCCUR NEAR THE PROJECT AREA THAT MAY BE TAKEN BY THE NAVY'S ACTIVITIES

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Artiodactyla—Cetacea—Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray Whale	*(Eschrichtius robustus)*	Eastern N Pacific	-,-, N	26,960 (0.05, 25,849, 2016) ..	801	131
Family Balaenopteridae (rorquals):						
Humpback Whale	*Megaptera novaeangliae*	Central America/Southern Mexico-California-Oregon-Washington.	E, D, Y	1,496 (0.171, 1,284, 2021)	3.5	14.9
		Mainland Mexico-California-Oregon-Washington.	T, D, Y	3,477 (0.101, 3,185, 2018)	43	22
		Hawaii	-, -, N	11,278 (0.56, 7,265, 2020)	127	27.09
Minke Whale	*Balaenoptera acutorostrata*	CA/OR/WA	-, -, N	915 (0.792, 509, 2018)	4.1	≥0.59
Odontoceti (toothed whales, dolphins, and porpoises)						
Family Phocoenidae (porpoises):						
Dall's Porpoise	*Phocoenoides dalli*	CA/OR/WA	-, -, N	16,498 (0.61, 10,286, 2019) ..	99	≥0.66
Harbor Porpoise	*Phocoena phocoena*	Washington Inland Waters	-, -, N	11,233 (0.37, 8,308, 2015)	66	≥7.2
Family Delphinidae:						
Killer Whale	*Orcinus orca*	West Coast Transient	-, -, N	349 (N/A, 349, 2018)	3.5	0.4
		Eastern North Pacific Southern Resident.	E, D, Y	74 (N/A, 74, 2021)	0.13	≥0.4
Order Carnivora—Pinnipedia						
Family Otariidae (eared seals and sea lions):						
CA Sea Lion	*Zalophus californianus*	U.S	-, -, N	257,606 (N/A,233,515, 2014)	14011	>320
Steller Sea Lion	*Eumetopias jubatus*	Eastern	-, -, N	43,201 (N/A, 43,201, 2017) ...	2,592	112
Family Phocidae (earless seals):						
Harbor Seal	*Phoca vitulina*	Washington Northern Inland Waters.	-, -, N	11,036 [5] (UNK, UNK, 1999) ...	UND	9.8

TABLE 2—MARINE MAMMAL SPECIES [4] LIKELY TO OCCUR NEAR THE PROJECT AREA THAT MAY BE TAKEN BY THE NAVY'S ACTIVITIES—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Northern Elephant Seal	*Mirounga angustirostris*	CA Breeding	-, -, N	187,386 (NA, 85,369, 2013) ..	5122	13.7

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/;* Committee on Taxonomy (2022)).

[5] The abundance estimate for this stock is greater than 8 years old and is therefore not considered current. PBR is considered undetermined for this stock, as there is no current minimum abundance estimate for use in calculation. We nevertheless present the most recent abundance estimates, as these represent the best available information for use in this document.

As indicated above, all nine species (with nine managed stocks) in Table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. However, no take is proposed for authorization for killer whales and humpback whales for the reasons provided below.

Southern resident killer whales do occur occasionally in the waters north of NAVMAG Indian Island although as of June 2023 they have not been reported near Port Townsend since December 2020 and then only by hydrophones so the exact locations are unknown (Orca Network, 2023). It is unlikely any would occur close to the Ammunition Wharf. Occurrence in the inland waters are low in the winter through early spring (Orca Network, 2023), when project activities would occur. While critical habitat has been designated in Puget Sound for southern resident killer whales, the designation does not include the Port Townsend/Indian Island/Walan Point naval restricted area which extends out 500 m from the Ammunition Wharf (73 FR 78633; December 23, 2008). In contrast to southern resident killer whales, which exclusively prey on fish, the main diet of transient killer whales consists of marine mammals. Within Puget Sound, transient killer whales primarily hunt pinnipeds and porpoises, though some groups will occasionally target larger whales. The seasonal movements of transients are largely unpredictable, although there is a tendency to investigate harbor seal haulouts off Vancouver Island more frequently during the pupping season in August and September (Baird, 1994; Ford, 2014). The movements and locations of southern resident killer whales are tracked daily by the Center for Whale Research and the Orca Network, therefore, exposures to noise from pile driving can be avoided if southern resident killer whales are known to be near the project area.

Similarly, humpback whales are considered to be regular, but not frequent visitors to Puget Sound, especially south of Admiralty Inlet. Opportunistic sightings primarily occur April through July in Puget Sound, although sightings have been reported in every month of the year. In addition to the timing of the planned activity, which minimizes potential for occurrence of humpback and killer whales, the Navy proposes to implement shutdown procedures for all cetaceans as needed to avoid harassment. For highly visible species, such as large whales, this is expected to be successful in avoiding any potential for take. No take of these species is anticipated or proposed for authorization, and we do not discuss them further.

Gray Whale

Two North Pacific populations of gray whales are formally recognized: the Western Pacific subpopulation (also known as the Western North Pacific or the Korean-Okhotsk population) (WNP) that is critically endangered and the Eastern Pacific population (also known as the Eastern North Pacific or the California-Chukchi population) (ENP) that appears to have recovered from exploitation and was removed from listing under the ESA in 1994 (Carretta *et al.,* 2016). The two populations have historically been considered geographically isolated from each other; however, data from satellite-tracked whales indicate that there is some overlap between the stocks. Two WNP whales were tracked from Russian foraging areas along the Pacific rim to Baja California (Mate *et al.,* 2011), and, in one case where the satellite tag remained attached to the whale for a longer period, a WNP whale was tracked from Russia to Mexico and back again (International Whaling Commission [IWC, 2012]). Between 22–24 WNP whales are known to have occurred in the eastern Pacific through comparisons of ENP and WNP photo-identification catalogs (IWC, 2012; Weller *et al.,* 2012; Burdin *et al.,* 2011). Urban *et al.* (2013) compared catalogs of photo-identified individuals from Mexico with photographs of whales off Russia and reported a total of 21 matches. Therefore, a portion of the WNP population is assumed to migrate, at least in some years, to the eastern Pacific during the winter breeding season. However, it is extremely unlikely that a gray whale in close proximity to NAVMAG Indian Island construction activity would be one of the few WNP whales that have been documented in the eastern Pacific. The likelihood that a WNP whale would be present in the vicinity of the proposed project is insignificant and discountable, and WNP gray whales are omitted from further analysis.

Eastern gray whales, however, are known to migrate along the U.S. West Coast on both their northward and southward migrations. As the majority of gray whales migrate past the Strait of Juan de Fuca in route to or from their feeding or breeding grounds, a few of them enter Washington inland waters to feed (Stout *et al.,* 2001; Calambodkidis *et al.,* 2015). Gray whales are observed in Washington inland waters, including Puget Sound in all months of the year (Calambokidis *et al.,* 2010; Orca Network, 2023) with peak numbers from March through June (Calambokidis *et al.,* 2010, 2015). Fewer than 20 gray whales are documented in the inland waters of Washington and British Columbia each year beginning in

January (Orca Network, 2011, as cited by Washington Department of Fish and Wildlife [WDFW], 2012). Most whales sighted are part of a small regularly occurring group of 6 to 10 gray whales that use mudflats in the Whidbey Island and the Camano Island area as a springtime feeding area (Calambokidis *et al.,* 2010). Gray whales feed on benthic invertebrates, including dense aggregations of ghost shrimp and tubeworms (Weitkamp *et al.,* 1992, Richardson, 1997).

Gray whales that are not identified with the regularly occurring group in the Whidbey Island and Camano Island area are occasionally sighted in Puget Sound. These whales are not associated with feeding areas and are often emaciated (WDFW, 2012). Gray whales are expected to occur in the waters surrounding NAVMAG Indian Island. They are expected to occur primarily from March through June when in-water construction work will not occur. Therefore, some exposure to individual gray whales could occur over the duration of the project; however, project timing will help to minimize potential exposures.

Minke Whale

Minke whales from California to Washington appear to be behaviorally distinct from migratory whales further north (*i.e.,* Alaska stock). Animals from the California, Oregon, and Washington stock, including Washington inland waters are considered ''resident''. Minke whales appear to establish home ranges in the inland waters of Washington (Dorsey, 1983; Dorsey *et al.,* 1990). They are reported in the inland waters year-round, although the majority of the records are from March through November (Calambokidis & Baird, 1994). Minke whales are sighted primarily in the San Juan Islands and Strait of Juan de Fuca but are relatively rare in Puget Sound south of Admiralty Inlet (Orca Network, 2023). In the Strait of Juan de Fuca, individuals move within and between specific feeding areas around submarine banks (Stern *et al.,* 1990). Dorsey *et al.* (1990) noted minke whales feeding in locations of strong tidal currents. Hoelzel *et al.* 16 (1989) reported that 80 percent of feeding observations in the San Juan Islands were over submarine slopes of moderate incline at a depth of about 20 m to 100 m. Three feeding grounds have been identified in the Strait of Juan de Fuca and San Juan Islands area (Osborne *et al.,* 1988; Hoelzel *et al.,* 1989; Dorsey *et al.,* 1990; Stern *et al.,* 1990). There is year-to-year variation in the use of these feeding areas, and other feeding areas probably exist (Osborne *et al.,* 1988; Dorsey *et al.,* 1990). A review of Washington inland water sighting data from January 2005 through August 2012 indicates that Minke whales typically occur as lone individuals or in small groups of two or three (Orca Network, 2023).

No minke whales have been reported in Port Townsend Bay although they have been reported in the Strait of Juan de Fuca and north of Port Townsend and along the western side of Whidbey Island near Smith Island in October (Orca Network, 2023).

Based on the information presented, the number of minke whales potentially present near NAVMAG Indian Island is expected to be very low in October and unlikely from November through February (Orca Network, 2023).

Dall's Porpoise

Dall's porpoise is one of the most common odontocete species in North Pacific waters (Jefferson, 1991; 2 Ferrero & Walker, 1999; Calambokidis & Barlow, 2004; Williams & Thomas, 2007). Dall's porpoise is found from northern Baja California, Mexico, north to the northern Bering Sea and south to southern Japan (Jefferson *et al.,* 1993). However, the species is only common between 32° N lat. and 62° N lat. in the eastern North Pacific (Morejohn, 1979; Houck & Jefferson, 1999). Dall's porpoise are found in outer continental shelf, slope, and oceanic waters, typically in temperatures less than 17 °C (Houck & Jefferson, 1999; Reeves *et al.,* 2002; Jefferson *et al.,* 2015).

Dall's porpoises may occur in Washington inland waters year-round, but appear to be very rare (Evenson *et al.,* 2016). Extensive aerial surveys conducted in Puget Sound and Hood Canal in all seasons from 2013–2015 logged only one sighting of one individual (Jefferson *et al.,* 2016). Only four Dall's porpoise were detected in aerial surveys of the northern inland waters of Washington (Strait of Juan de Fuca, San Juan Islands, Strait of Georgia) during spring 2015 (Smultea *et al.,* 2015). Additional sightings have been reported in the Strait of Juan de Fuca and Haro Strait between San Juan Island and Vancouver Island (Nysewander *et al.,* 2005; Orca Network, 2023). Tagging studies suggest Dall's porpoises seasonally move between the Haro Strait area and the Strait of Juan de Fuca or farther west (Hanson *et al.,* 1998).

Dall's porpoise were detected in Puget Sound during aerial surveys in winter (1993–2008) and summer (1992–1999) (Nysewander *et al.,* 2005; WDFW, 2008), with additional observations reported to Orca Network (2023). During the surveys, Dall's porpoise were sighted in Puget Sound as far south as Carr Inlet in southern Puget Sound and as far north as Saratoga Passage, north of Naval Station (NAVSTA) Everett (Nysewander *et al.,* 2005; WDFW, 2008). Recent extensive aerial surveys of Puget Sound and Hood Canal during 2013–2015 detected only one individual (Jefferson *et al.,* 2016), but did not specify its location. The number of Dall's porpoises potentially present near NAVMAG Indian Island is expected to be very low in any month.

Harbor Porpoise

In Washington inland waters, harbor porpoise are known to occur in the Strait of Juan de Fuca and the San Juan Islands area year-round (Calambokidis and Baird, 1994; Osmek *et al.,* 1996; Carretta *et al.,* 2012). Harbor porpoises were historically one of the most commonly observed marine mammals in Puget Sound (Scheffer and Slipp, 1948); however, there was a significant decline in sightings beginning in the 1940s (Everitt *et al.,* 1979; Calambokidis *et al.,* 1992). Only a few sightings were reported between the 1970s and 1980s (Calambokidis *et al.,* 1992; Osmek *et al.,* 1996; Raum-Suryan and Harvey, 1998), and no harbor porpoise sightings were recorded during multiple ship and aerial surveys conducted in Puget Sound (including Hood Canal) in 1991 and 1994 (Calambokidis *et al.,* 1992; Osmek *et al.,* 1996).

Incidental sightings of marine mammals during aerial bird surveys conducted as part of the Puget Sound Ambient Monitoring Program (PSAMP) detected few harbor porpoises in Puget Sound between 1992 and 1999 (Nysewander *et al.,* 2005). However, these sightings may have been negatively biased due to the low elevation of the plane, which may have caused an avoidance behavior. Since 1999, PSAMP data, stranding data, and aerial surveys conducted from 2013 to 2016 documented increasing numbers of harbor porpoise in Puget Sound, indicating that the species is increasing in the area (Nysewander, 2008; WDFW, 2008; Jeffries, 2013; Smultea *et al.,* 2017).

Little information is available on harbor porpoise occurrence outside of Hood Canal and no site-specific information is available for NAVMAG Indian Island. No harbor porpoises have been reported in Port Townsend Bay although they have been reported just north of Port Townsend and along Marrowstone Island as they move south into Puget Sound (Orca Network, 2023). Based on the information presented, the number of harbor porpoises present near

NAVMAG Indian Island is expected to be very low in any month and even lower in winter months.

California Sea Lion

During the summer, California sea lions breed on islands from the Gulf of California to the Channel Islands and forage in the Southern California Bight. The primary rookeries are located on the California Channel Islands of San Miguel, San Nicolas, Santa Barbara, and San Clemente. In the nonbreeding season, adult and subadult males migrate northward along the coast to central and northern California, Oregon, Washington, and Vancouver Island, and return south in the spring (DeLong *et al.,* 2017; Weise and Harvey, 2008). Primarily male California sea lions migrate into northwest waters with most adult females with pups remaining in waters near their breeding rookeries off the coasts of California and Mexico (Melin *et al.,* 2000; Lowry and Maravilla-Chavez, 2005; Kuhns and Costa., 2014; Lowry *et al.,* 2017). California sea lions also enter bays, harbors, and river mouths and often haul out on artificial structures such as piers, jetties, offshore buoys, and oil platforms.

Jeffries *et al.* (2000) and Jeffries (2012 personal communication) identified dedicated, regular haulouts used by adult and sub-adult California sea lions in Washington inland waters (See Figure 4–1 in the Navy's application). California sea lions are typically present most of the year except for mid-June through July in Washington inland waters, with peak abundance between October and May (NMFS, 1997; Jeffries *et al.,* 2000). California sea lions would be expected to forage within the area, following local prey availability.

Steller Sea Lion

The eastern stock of Steller sea lions is found along the coasts of southeast Alaska to northern California where they occur at rookeries and numerous haulout locations along the coastline (Jeffries *et al.,* 2000; Scordino, 2006). Male Steller sea lions often disperse widely outside of the breeding season from breeding rookeries in northern California (*e.g.,* St. George Reef) and southern Oregon (*e.g.,* Rogue Reef) (Scordino, 2006; Wright *et al.,* 2010). Based on mark recapture sighting studies, males migrate back into these Oregon and California locations from winter feeding areas in Washington, British Columbia, and Alaska (Scordino, 2006).

In Washington, Steller sea lions use haulout sites primarily along the outer coast from the Columbia River to Cape Flattery, as well as along the Vancouver Island side of the Strait of Juan de Fuca (Jeffries *et al.,* 2000). A major winter haulout is located in the Strait of Juan de Fuca at Race Rocks, British Columbia, Canada (Canadian side of the Strait of Juan de Fuca) (Edgell & Demarchi, 2012). Numbers vary seasonally in Washington with peak numbers present during the fall and winter months and a decline in the summer months that corresponds to the breeding season at coastal rookeries (approximately late May to early June) (Jeffries *et al.,* 2000). In Puget Sound, Jeffries (2012 personal communication) identified five winter haulout sites used by adult and subadult (immature or pre-breeding animals) Steller sea lions, ranging from immediately south of Port Townsend (near Admiralty Inlet) to Olympia in southern Puget Sound (see Figure 4–1 in the Navy's application). Numbers of animals observed at these sites ranged from a few to less than 100 (Jeffries, 2012 personal communication). In addition, Steller sea lions opportunistically haul out on various navigational buoys in Admiralty Inlet south through southern Puget Sound near Olympia (Jeffries, 2012 personal communication). One or two animals occur on these buoys.

No haulouts are known in the immediate vicinity of NAVMAG Indian Island; therefore, no shore-based surveys have been conducted there and no opportunistic sightings have been reported. The nearest Steller sea lion haul-outs to NAVMAG Indian Island is located on the east side of Marrowstone Island, approximately 7 km away (Figure 4–1 in the Navy's application). Monitoring during pile driving in 2015 and 2016 did not observe any Steller sea lions hauled out on the Port Security Barrier or swimming through the area (Navy, 2014, 2016, 2021). Therefore, Steller sea lions are expected to be rare in the waters off NAVMAG Indian Island.

Northern Elephant Seal

The northern elephant seal occurs almost exclusively in the eastern and central North Pacific. Rookeries are located from central Baja California, Mexico, to northern California (Stewart & Huber, 1993). Adult elephant seals engage in two long migrations per year, one following the breeding season, and another following the annual molt (Stewart and DeLong, 1995; Robinson *et al.,* 2012). Between the two foraging periods they return to land to molt with females returning earlier than males (March through April versus July through August). After the molt, adults then return to their northern feeding areas until the next winter breeding season. Breeding occurs from December to March (Stewart & Huber, 1993). Juvenile elephant seals typically leave the rookeries in April or May and head north, traveling an average of 900 to 1,000 km. Most elephant seals return to their natal rookeries when they start breeding (Huber *et al.,* 1991). Their foraging range extends thousands of miles offshore into the central North Pacific. Adults tend to stay offshore, but juveniles and subadults are often seen along the coasts of Oregon, Washington, and British Columbia (Condit & Le Boeuf, 1984; Stewart & Huber, 1993).

In Washington inland waters, there are regular haulout sites in the Strait of Juan de Fuca at Smith and Minor Islands, Dungeness Spit, and Protection Island that are thought to be used year-round (Jeffries *et al.,* 2000; Jeffries, 2012 personal communication) (Figure 4–1 in the Navy's application). Pupping has occurred at these sites, as well as Race Rocks on the British Columbia side of the Strait of Juan de Fuca (Jeffries, 2012 personal communication).

No haulouts occur in Puget Sound with the exception of individual elephant seals occasionally hauling out for 2 to 4 weeks to molt, usually during the spring and summer and typically on sandy beaches (Calambokidis & Baird, 1994). These animals are usually yearlings or subadults and their haulout locations are unpredictable. Although regular haul-outs occur in the Strait of Juan de Fuca, the occurrence of elephant seals in Puget Sound is unpredictable and rare.

Pacific Harbor Seal

Harbor seals are a coastal species, rarely found more than 21 km from shore, and frequently occupy bays, estuaries, and inlets (Baird, 2001). Individual seals have been observed several kilometers upstream in coastal rivers (Baird, 2001). Ideal harbor seal habitat includes haul-out sites, shelter during the breeding periods, and sufficient food (Bjørge, 2002). Harbor seals generally do not make extensive pelagic migrations (*i.e.,* less than 50 km; Baird, 2001), Harbor seals have also displayed strong fidelity to haul-out sites.

Harbor seals are the most common, widely distributed marine mammal found in Washington marine waters and are frequently observed in the nearshore marine environment. They occur year-round and breed in Washington. Numerous harbor seal haulouts occur in Washington inland waters (Figure 4–1 in the Navy's application). Haulouts include intertidal and subtidal rock outcrops, beaches, reefs, sandbars, log

booms, and floats. Numbers of individuals at haul-outs range from a few to between 100 and 500 individuals (Jeffries *et al.,* 2000). Harbor seals are expected to occur year-round, the nearest documented haul-out to NAVMAG Indian Island is Rat Island at the north end of NAVMAG Indian Island approximately 2.4 km from the Ammunition Wharf. The haulout at Rat Island is estimated to have less than 100 individuals (Jeffries, 2012 personal communication).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Acoustic effects on marine mammals during the specified activities can occur from impact pile driving and vibratory driving and removal. The effects of underwater noise from the Navy's proposed activities have the potential to result in Level A or Level B harassment of marine mammals in the action areas.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far (American National Standards Institute [ANSI], 1995). The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 decibels (dB) from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activities may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the projects would include impact and vibratory pile installation and vibratory removal. The sounds produced by these activities fall into one of two general sound types: impulsive and non-impulsive. Impulsive sounds (*e.g.,* explosions,

sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI, 1986; National Institute for Occupational Safety and Health [NIOSH], 1998; NMFS, 2018). Non-impulsive sounds (*e.g.,* machinery operations such as drilling or dredging, vibratory pile driving, underwater chainsaws, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with raid rise/decay time that impulsive sounds do (ANSI 1995; NIOSH 1998; NMFS 2018). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward 1997 in Southall *et al.,* 2007).

Two types of hammers would be used on these projects, impact and vibratory. Impact hammers operate by repeatedly dropping and/or pushing a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is considered impulsive. Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce non-impulsive, continuous sounds. Vibratory hammering generally produces sound pressure levels (SPLs) 10 to 20 dB lower than impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.,* 2005).

The likely or possible impacts of the Navy's proposed activities on marine mammals could be generated from both non-acoustic and acoustic stressors. Potential non-acoustic stressors include the physical presence of the equipment, vessels, and personnel; however, we expect that any animals that approach the project site(s) close enough to be harassed due to the presence of equipment or personnel would be within the Level B harassment zones from pile driving and would already be subject to harassment from the in-water activities. Therefore, any impacts to marine mammals are expected to primarily be acoustic in nature. Acoustic stressors are generated by heavy equipment operation during pile installation and removal (*i.e.,* impact and vibratory pile driving and removal).

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving equipment is the primary means by which marine mammals may be harassed from the Navy's specified activities. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.,* 2007). Generally, exposure to pile driving and removal and other construction noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses such as an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving and demolition noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mother with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.,* 2004; Southall *et al.,* 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat. No physiological effects other than permanent threshold shift (PTS) (discussed below) are anticipated or proposed to be authorized, and therefore are not discussed further.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.,* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB TS approximates PTS onset (see Ward *et al.,* 1958, 1959; Ward, 1960; Kryter *et al.,* 1966; Miller, 1974; Ahroon *et al.,* 1996; Henderson *et al.,* 2008). PTS levels for marine mammals are estimates, because there are limited empirical data measuring PTS in marine mammals (*e.g.,* Kastak *et al.,* 2008), largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS, 2018).

Temporary Threshold Shift (TTS)—A temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Based on data from cetacean TTS measurements (see Southall *et al.,* 2007), a TTS of 6 dB is considered the minimum TS shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.,* 2000; Finneran *et al.,* 2000, 2002). As described in Finneran (2016), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SEL_{cum}) in an accelerating fashion: At low exposures with lower SEL_{cum}, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SEL_{cum}, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many

competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and five species of pinnipeds exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). The potential for TTS from impact pile driving exists. After exposure to playbacks of impact pile driving sounds (rate 2,760 strikes/hour) in captivity, mean TTS increased from 0 dB after 15 minute exposure to 5 dB after 360 minute exposure; recovery occurred within 60 minutes (Kastelein *et al.,* 2016). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and Table 5 in NMFS (2018).

The Navy proposes to use impact pile driving to install some piles for these projects. There would likely be pauses in activities producing the sound (*e.g.,* impact pile driving) during each day. Given these pauses and the fact that many marine mammals are likely moving through the project areas and not remaining for extended periods of time, the potential for TS declines.

Behavioral Harassment—Exposure to noise from pile driving and removal also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; National Research Council [NRC], 2005).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); or avoidance of areas where sound sources are located. Pinnipeds may increase their haulout time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2004; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B and C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Stress Responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003), however distress is an unlikely result of these projects based on observations of marine mammals during previous, similar projects in the area.

Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* pile driving, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.,* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked. The Puget Sound area contains active commercial shipping, ferry operations, and commercial fishing as well as numerous recreational and other commercial vessels, and background sound levels in the area are already elevated.

Airborne Acoustic Effects—Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile driving and removal that have the potential to cause behavioral harassment, depending on their distance from pile driving activities. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Airborne noise would primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels elevated above the acoustic criteria. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would likely previously have been taken because of exposure to underwater sound above the behavioral harassment thresholds, which are generally larger than those associated with airborne sound. There are no haulouts in close proximity to the project site. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here.

Marine Mammal Habitat Effects

The Navy's proposed construction activities could have localized, temporary impacts on marine mammal habitat, including prey, by increasing in-water sound pressure levels and slightly decreasing water quality. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project areas (see discussion below). During impact and vibratory pile driving or removal, elevated levels of underwater noise would ensonify the project areas where both fishes and mammals occur and could affect foraging success. Additionally, marine mammals may avoid the area during construction, however, displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations. Construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater and airborne sound.

A temporary and localized increase in turbidity near the seafloor would occur in the immediate area surrounding the area where piles are installed or removed. In general, turbidity associated with pile installation is localized to about a 25-ft (7.6-m) radius around the pile (Everitt *et al.,* 1980). The sediments of the project site will settle out rapidly when disturbed. Cetaceans are not expected to be close enough to the pile driving areas to experience effects of turbidity, and any pinnipeds could avoid localized areas of turbidity. Local currents are anticipated to disburse any additional suspended sediments produced by project activities at moderate to rapid rates depending on tidal stage. Therefore, we expect the impact from increased turbidity levels to be discountable to marine mammals and do not discuss it further.

In-Water Construction Effects on Potential Foraging Habitat—The area likely impacted by the project is relatively small compared to the available habitat in Port Townsend Bay and the larger Puget Sound. The area is highly influenced by anthropogenic activities. The total seafloor area affected by pile installation and removal is a small area compared to the vast foraging area available to marine mammals in the area. At best, the impact area provides marginal foraging habitat for marine mammals and fishes. Furthermore, pile driving and removal at the project site would not obstruct long-term movements or migration of marine mammals.

Avoidance by potential prey (*i.e.,* fish or, in the case of transient killer whales, other marine mammals) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish and marine mammal avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated. Any behavioral avoidance

by fish or marine mammals of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity.

In-Water Construction Effects on Potential Prey—Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton, other marine mammals). Marine mammal prey varies by species, season, and location. Here, we describe studies regarding the effects of noise on known marine mammal prey other than other marine mammals (which have been discussed earlier).

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick and Mann, 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish; several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.,* 2013; Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009).

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013).

The most likely impact to fishes from pile driving and removal and construction activities at the project areas would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated.

Construction activities, in the form of increased turbidity, have the potential to adversely affect forage fish in the project areas. Forage fish form a significant prey base for many marine mammal species that occur in the project areas. Increased turbidity is expected to occur in the immediate vicinity (on the order of 10 ft (3 m) or less) of construction activities. However, suspended sediments and particulates are expected to dissipate quickly within a single tidal cycle. Given the limited area affected and high tidal dilution rates any effects on forage fish are expected to be minor or negligible. Finally, exposure to turbid waters from construction activities is not expected to be different from the current exposure; fish and marine mammals in the project area are routinely exposed to substantial levels of suspended sediment from natural and anthropogenic sources.

In summary, given the brief and intermittent duration (24 days between October 1 and January 15) of sound associated with individual pile driving events and the relatively small areas being affected, pile driving activities associated with the proposed actions are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. Thus, we conclude that impacts of the specified activities are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this proposed rule, which will inform both NMFS' consideration of ''small numbers,'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of the acoustic sources (*i.e.,* vibratory and impact pile driving equipment) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for harbor seals (phocids) because these animals are known to occur in close proximity to the pile driving locations. Auditory injury is unlikely to occur for other hearing groups or species. The proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below, we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the

density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021; Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 µPa)) for continuous (*e.g.,* vibratory pile-driving, drilling) and above RMS SPL 160 dB re 1 µPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

The Navy's proposed activity includes the use of continuous (vibratory hammer source type) and impulsive (impact hammer) sources, and therefore the RMS SPL thresholds of 120 and 160 dB re 1 µPa are applicable.

Level A Harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The Navy's proposed activity includes the use of impulsive (impact hammer) and non-impulsive (vibratory hammer) sources.

These thresholds are provided in the Table 4 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 µPa, and cumulative sound exposure level (L_E) has a reference value of 1µPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected by sound generated by the primary components of the project (*i.e.,* impact and vibratory pile driving).

Data from prior pile driving projects at the Naval Base Kitsap Bangor and Bremerton waterfronts were reviewed in the analysis. The representative sound pressure levels used in the analysis are presented in Table 5.

For vibratory pile driving distances to the PTS thresholds, the transmission loss (TL) model described above incorporated the auditory weighting functions for each hearing group using a single frequency as described in the NMFS Spreadsheet (NMFS, 2018). For impact pile driving distances to the PTS thresholds for 36-inch steel pile and 24-inch concrete pile, the TL model described above incorporated frequency weighting adjustments by applying the auditory weighting function over the entire 1-second SEL spectral data sets from impact pile driving. If a source level for a particular pile size was not available, the next highest source level was used to produce a conservative estimate of areas above threshold values.

In order to calculate distances to the Level A harassment and Level B harassment thresholds for the methods and piles being used in this project, the Navy used acoustic monitoring data from various similar locations to develop source levels for the different pile types, sizes, and methods proposed for use (Table 5).

TABLE 5—SOURCE LEVELS FOR PROPOSED REMOVAL AND INSTALLATION ACTIVITIES

		Pile diameter (inches)	RMS [1] (dB re 1 μPa)	Peak [1] (dB re 1 μPa)	SEL [2] (dB re 1 μPa² sec)
Impact Installation	Concrete	24	174	189	167
	Steel Pipe [2]	36	192	211	184
Vibratory Removal	Steel Fender	14	150	N/A	N/A
Vibratory Installation	Steel Fender	14	150	N/A	N/A
	Composite Fender	18.75	150	N/A	N/A
	Steel pipe	36	167	N/A	N/A

Source: Navy, 2015; Navy, 2017, 2018, NAVFAC SW, 2020; WDOT, 2017.
Key: N/A = not applicable; RMS = root mean square; SEL = sound exposure level.
[1] Sound pressure levels are presented for a distance of 10 m from the pile. RMS and Peak levels are relative to 1 μPa and cumulative SEL levels are relative to 1 μPa_2 sec; and
[2] Values modeled for impact driving 36-inch steel piles will be reduced by 8 dB for noise exposure modeling to account for attenuation from a bubble curtain.

A bubble curtain will be used to minimize the noise generated by impact driving of steel pipe piles. Note that impact pile driving of steel piles would only occur if it is necessary to install the 36-inch steel piles and none are currently planned to be installed. If steel piles became necessary then a maximum of 2 piles would be installed within the 5-year effective period of the LOA. The bubble curtain is expected to attenuate impact pile driving sound levels an average of 8 dB based on past performance during similar Navy projects in Puget Sound (Navy, 2015); therefore, 8 dB was subtracted from values in Table 5 prior to modeling the behavioral and PTS thresholds for impact pile driving steel pipe piles. For the cumulative SEL PTS thresholds, auditory weighting functions were applied to the attenuated one-second SEL spectra for steel pipe piles.

Level B Harassment Zones

TL is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$TL = B * Log10 (R1/R2)$,

Where:

TL = transmission loss in dB,
B = transmission loss coefficient (for practical spreading equals 15),
R1 = the distance of the modeled SPL from the driven pile, and
R2 = the distance from the driven pile of the initial measurement.

The recommended TL coefficient for most nearshore environments is the practical spreading value of 15. This value results in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions, which is the most appropriate assumption for the Navy' proposed activities. The Level B harassment zones and areas for the Navy's proposed activities are shown in Table 6.

TABLE 6—CALCULATED RADIAL DISTANCE(S) TO UNDERWATER MARINE MAMMAL VIBRATORY PILE DRIVING NOISE THRESHOLDS AND AREAS ENCOMPASSED WITHIN THRESHOLD DISTANCE

Type	Behavioral disturbance—Level B harassment (120 dB RMS)	
	Radial distance to threshold	Area encompassed by threshold
14-inch steel H fender pile (vibratory)	1,000 m	1.8 km.
18.75-in composite fender pile (vibratory)	1,000 m	1.8 km.
36-inch steel (vibratory)	13.6 km	54 km.

Level A Harassment Zones

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources such as impact and vibratory driving, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS.

The isopleths generated by the User Spreadsheet used the same TL coefficient as the Level B harassment zone calculations (*i.e.,* the practical spreading value of 15). Inputs used in the User Spreadsheet (*e.g.,* number of piles per day, duration and/or strikes per pile) are presented in Table 7. The maximum RMS SPL/SEL SPL and resulting isopleths are reported below in Table 8 and Table 9. The maximum

RMS SPL value was used to calculate Level A harassment isopleths for vibratory pile driving while the single strike SEL SPL value was used to calculate Level A harassment isopleths for impact pile driving activities. Note that Peak PTS thresholds were smaller for all pile sizes and hearing groups compared to SEL SPL values.

TABLE 7— PARAMETERS OF PILE DRIVING ACTIVITY USED IN USER SPREADSHEET

	24-inch concrete	36-inch steel	Fender pile	Removal or installation of steel 14-inch steel or 18.75-inch composites	36-inch steel
Type of installation/removal	Impact	Impact	Vibratory	Vibratory	Vibratory.
Source Level	167 SEL/189 PK	184 SEL/211 PK	144 RMS	150 RMS	192 RMS
Weighting Factor Adjustment (kHz)	2	2	2.5	2.5	2.5.
(a) Number of strikes/pile	1,000	500			
(a) Activity Duration (min) within 24-h period			10	10	45.
Propagation (xLogR)	15	15	15	15	15.
Piles per day	2	1	2	2	1.
Distance of source level measurement (meters)	10	10	10	10	10.

TABLE 8—CALCULATED RADIAL DISTANCE(S) TO IMPACT PILE DRIVING NOISE THRESHOLDS FOR LEVEL A AND LEVEL B HARASSMENT AND ASSOCIATED AREAS [1]

	Level A harassment pinnipeds		Level A harassment cetaceans			Behavioral disturbance level B (160 dB RMS)	
	Harbor seal	Sea lion	LF	MF	HF	Radial distance to threshold	Area encompassed by threshold
24-inch concrete	29 m	2 m	54 m	2 m	64 m	86 m	0.02 km^2.
36-inch steel	182 m	13 m	243 m	8 m	256 m	398 m	0.5 km^2.

[1] Calculations based on SEL_{CUM} threshold criteria shown in Table 4 and source levels shown in Table 5.

TABLE 9—CALCULATED RADIAL DISTANCE(S) TO VIBRATORY PILE DRIVING NOISE THRESHOLDS FOR LEVEL A AND LEVEL B HARASSMENT AND ASSOCIATED AREAS [1]

Type	Level A harassment pinnipeds		Level A harassment cetaceans			Behavioral disturbance level B (120 dB RMS)	
	Phocids	Otariids	LF	MF	HF	Radial distance to threshold	Area encompassed by threshold
14-inch steel H fender pile (vibratory)	<1 m	<1 m	<1 m	<1 m	<1 m	1,000 m	1.8 km^2.
18.75-in composite fender pile (vibratory)	<1 m	<1 m	<1 m	<1 m	<1 m	1,000 m	1.8 km^2.
36-inch steel (vibratory)	4 m	<1 m	7 m	<1 m	11 m	13.6 km	54 km^2.

[1] Vibratory pile driving would only occur if it is necessary to install 36 inch steel piles, none are currently planned to be installed. If steel piles became necessary then only up to eight would be installed within the 5 years of the LOA.

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide information about the occurrence of marine mammals, including density or other relevant information that will inform the take calculations. We describe how the information provided above is brought together to produce a quantitative take estimate for each species.

To quantitatively assess potential exposure of marine mammals to noise levels from pile driving over the NMFS threshold guidance, the following equation was first used to provide an estimate of potential exposures within estimated harassment zones:

Exposure estimate = N × Level B harassment zone (km^2) × maximum days of pile driving per year where N = density estimate (animals per km^2) used for each species.

Note that the area of the harassment zone is truncated by land masses surrounding the area (*i.e.,* Whidbey Island, Port Townsend mainland, and Indian Island). Densities are shown in Table 10.

In addition, local occurrence data from prior monitoring efforts, discussed in the next paragraph, was used as a supplement to estimate potential occurrence of harbor seals within the Level A harassment zones. This method is conservative in providing estimates of potential exposure above the total given using the aforementioned equation that we equate here with Level A harassment.

For harbor seals, which were the primary species found within 1,000 m of the Ammunition Wharf during pile driving monitoring from 2014–2016 and 2020 (Navy, 2014, 2016, 2021), a daily rate of harbor seal occurrence was determined for vibratory installation of fender piles for the Level A harassment zones. Only harbor seals were observed during pile driving monitoring (Navy, 2016, 2020) and weekly marine mammal surveys (2022) at NAVMAG Indian Island Ammunition Wharf with the exception of a single harbor porpoise and a single California sea lion. The site-specific data was used to estimate take only for harbor seals at a rate of 0.5 seals per day from concrete impact driving and eight seals per day from steel impact driving, based on the different estimated zone sizes.

During the site-specific monitoring efforts discussed above, only harbor seals were observed during pile driving monitoring (Navy, 2016, 2020) and weekly marine mammal surveys (2022) at NAVMAG Indian Island Ammunition Wharf, with the exception of a single harbor porpoise and a single California sea lion. For species other than harbor seal—for which use of the available density information and the equation given above provide low calculated take estimates (described in species-specific sections below)—it was assumed between one (*i.e.,* gray whale, minke whale) and three animals would be taken over the duration of the proposed rule (by Level B harassment only). For California sea lions, Steller sea lions, and northern elephant seals it was assumed that there would be 1 take per year from concrete/fender pile installation (by Level B harassment only). It was also assumed that there would be 1 additional take per year by Level B harassment during steel pile installation for the northern elephant seal. In contrast to pinniped species, Dall's porpoises and harbor porpoises often occur in pods of two to four porpoises. Therefore, it was assumed that there would be up to three takes per year by concrete/fender pile installation for each species with three additional takes per year only for Dall's porpoises per year due to steel pile installation. All takes are assumed to be by Level B harassment only, based on the assumed rarity of occurrence and the Navy's proposal to implement shutdown procedures for all cetaceans at the estimated Level B harassment distance.

The density estimates given in Table 10 come from the Pacific NMSDD, NAVFAC Pacific Technical Report (Navy, 2020) and Smultea *et al.* (2017) (for harbor porpoise). The seasonal density value for each species during the in-water work window at each site was used in the marine mammal take assessment calculation.

Note that The largest Level B harassment zone will be generated during vibratory driving. The Level B harassment zone for an impact hammer will be encompassed by the larger Level B harassment zone from the vibratory driver. Impact pile driving was assumed to be one pile per day but actual daily production rates may be higher with a maximum of two per day, resulting in fewer in-water pile driving days. It was assumed that 22 days of concrete pile installation would occur. This is a conservative estimate based on past work at NAVMAG. There would be up to 22 concrete piles (24-in) driven over the maximum of 22 days per year over 5 years with up to two 24-inch concrete piles driven per day (1-2 piles installed per day; mean of 1.8 piles installed per day) depending on accessing the wharf deck, weather, harbor seal delays, or equipment issues. Note that this conservative estimate of pile driving days is used solely to assess the number of days during which pile driving could occur if production was delayed due to equipment failure, safety, *etc.* In a real construction situation, pile driving production rates would be maximized when possible.

TABLE 10—MARINE MAMMAL SPECIES DENSITIES IN PROJECT AREA

Species	Region location	Density (October–February) * animals km^2
Gray whale	North Puget Sound	Zero (within 1,000 m) [1] 0.00048 (Fall and Winter).[2]
Minke Whale	Puget Sound	Zero (within 1,000 m) [1] 0.00045 (Annual).[2]
Harbor porpoise	North Puget Sound	1.16 (Annual).[2 3]
Dall's porpoise	Puget Sound	0.00045 (Annual) [2].
Steller sea lion	Puget Sound	Zero (within 1,000 m) [2] 0.0478 (Fall and Winter).[1]
California sea lion	Puget Sound	Zero (within 1,000 m) [1] 0.2211 (Fall) [2] 0.1100 (Winter).[2]
Northern elephant seal	Puget Sound	Zero (within 1,000 m) [1] 0.0000 (Annual).[2]
Harbor Seal	North Puget Sound	14-18.75 inch Fender Pile Driving: [1] Within 10 m = 0.0 seals/day (Level A zone). Within 1,000 m = 15.54 seals per day (Level B harassment zone).
		24 inch Concrete Impact Pile Driving: [1] Within 29 m = 0.5 seals/day (Level A harassment zone). Combine with the larger fender pile vibratory Level B harassment zone.
		36 inch Steel Impact Pile Driving: [1] Within 182 m = 8 seals/day (Level A harassment zone). Combine with the larger vibratory zone for Level B harassment.
		36 inch Steel Vibratory Pile Driving: Within 10 m = 0.0 seals/day (Level A zone). Within 13.6 km (54 km^2) = 2.83 seals/km^2.

* 13.6 km with an area of 54 km^2 (a large part of the area was truncated by land masses) was used for 36-inch steel pile vibratory installation.
Sources: [1] Navy, 2014, 2016; 2021; [2] NMSDD (Navy, 2020), [3] Smultea *et al.* (2017).

It is important to note that the successful implementation of mitigation methods (*i.e.,* visual monitoring and the use of shutdown zones) is expected to result in no Level A harassment exposure to all marine mammals except harbor seals because the injury zones and behavioral zones will be monitored during pile driving. Harbor seal Level A harassment exposure will be limited to the smallest extent practicable. The exposure assessment estimates the numbers of individuals potentially exposed to the effects of pile driving noise exceeding NMFS established thresholds. Results from acoustic impact exposure assessments should be regarded as conservative overestimates that are strongly influenced by limited marine mammal data, the assumption that marine mammals will be present during pile driving, and the assumptions that the maximum number of piles will be extracted or installed.

Gray Whale

Most gray whales in Puget Sound utilize the feeding areas in northern Puget Sound around Whidbey Island and in Port Susan in March through June with a few individual sightings occurring year-round that are not always associated with feeding areas. Therefore, gray whales are included in the proposed take authorization. The majority of in-water work will occur during the fall and winter when gray whales are less likely to be present in Puget Sound. Therefore, based on a low probability of occurrence within the vibratory harassment zones, the Navy used the formula described above to

calculate estimated exposures. The formula estimated zero takes per year; however, due to the uncertainty of gray whale movements and the large area of exposure during vibratory driving of 36-inch steel piles, the Navy has requested and NMFS proposes to authorize take by Level B harassment at a rate of one animal per year.

To protect gray whales from noise impacts, the Navy will implement a shutdown if protected species obervers (PSOs) see gray whales approaching or within any harassment zone. A PSO will be stationed at locations from which the injury zone and behavioral zone for impact and vibratory pile driving are visible and will implement shutdown if a whale approaches or enters either zone. With the implementation of monitoring, even if a whale enters an injury zone, shutdown would occur before cumulative exposure to noise levels that would result in PTS could occur. Because pile driving will be shut down if whales are in the injury zone, no Level A harassment take has been requested or is being proposed for authorization by NMFS. In summary, the Navy has requested, and NMFS proposes, to authorize one take of gray whale by Level B harassment each year for the duration of the 5-year LOA.

Minke Whale

Minke whales in Washington inland waters typically feed in the areas around the San Juan Islands and along banks in the Strait of Juan de Fuca. Minke whales are infrequent visitors to Puget Sound, especially east of Admiralty Inlet. When present, minke whales are usually seen singly or in pairs. Therefore, based on a low probability of occurrence within the vibratory harassment zones, the Navy used the same equation discussed above to calculate estimated exposures. The formula estimated zero takes annually for the duration of the LOA. However, due to the uncertainty of minke whale movements and the large area of exposure during vibratory driving of 36-inch steel piles, the Navy requested takes for the exposure of one minke whale per year for the duration of the 5-year LOA.

To protect minke whales from noise impacts, the Navy will implement a shutdown if PSOs see minke whales approaching or within any harassment zone. A PSO will be stationed at locations from which the injury zone and behavioral zone for impact and vibratory pile driving are visible and will implement shutdown if a whale approaches or enters either zone. PSOs may be stationed on boats to observe a greater portion of the shutdown zone than is visible from land-based locations. With the implementation of monitoring, even if a whale enters an injury zone, shutdown would occur before cumulative exposure to noise levels that would result in PTS could occur. Because pile driving will be shut down if whales are in the injury zone, no Level A harassment take has been requested or is being proposed for authorization by NMFS. In summary, although minke whales are rare in the project area, the Navy has requested and NMFS proposes to authorize one take of minke whale by Level B harassment each year for the duration of the 5-year LOA.

Dall's Porpoise

Dall's porpoises are most abundant in the Strait of Juan de Fuca and Haro Strait in the San Juan Islands area, but may be present in Puget Sound year-round. Group size is usually two to four, although larger groups are often sighted (Anderson *et al.,* 2018). In Puget Sound, the Navy has estimated that Dall's porpoise density is 0.045 animals/km^2, although they have not been reported near NAVMAG Indian Island in recent years and their occurrence in both the Salish Sea and Puget Sound appears to be declining (Smultea *et al.,* 2015; Evenson *et al.,* 2016; Jefferson *et al.,* 2016). The Navy used the formula described previously to calculate potential exposures. The formula estimated zero takes. Due to the uncertainty of Dall's porpoise movements and the large estimated harassment area during vibratory driving, the Navy assumed, and NMFS concurred, that there would be three takes from work on the fender piles and three takes from work on the steel piles each year, by Level B harassment only.

To protect Dall's porpoises from noise impacts, the Navy will implement a shutdown if PSOs see porpoises approaching or inside of any harassment zone. A PSO will be stationed at locations from which the harassment zones for impact and vibratory pile driving are visible and will implement shutdown if a porpoise approaches or enters any zone. With the implementation of monitoring, even if a Dall's porpoise enters an injury zone, shutdown would occur before cumulative exposure to noise levels that would result in PTS could occur. Because pile driving will be shut down if porpoises are in the injury zone, no Level A harassment take has been requested or is proposed for authorization. In summary, although Dall's porpoises are rare in the project area, the Navy has requested, and NMFS proposes, to authorize take of 30 Dall's porpoises (6 per year) by Level B harassment over the 5-year LOA period.

Harbor Porpoise

Harbor porpoises may be present in all major regions of Puget Sound throughout the year. Group sizes ranging from 1 to 150 individuals were reported in aerial surveys conducted from summer 2013 to spring 2016, but mean group size was 1.7 animals (Smultea *et al.,* 2017). The estimated harbor porpoise density in inland waters is provided in Table 10. The estimated exposure equation described previously was employed resulting in 125 takes per year from steel vibratory driving. Take from concrete/fender vibratory driving was calculated to be 0.05 exposures per year. However, the Navy requested authorization of three takes per year resulting from this activity as a precaution. Note that harbor porpoises were not observed during pile driving monitoring at NAVMAG Indian Island ammunition wharf from 2014 to 2016 (Navy, 2014; Navy 2016), but one was observed in 2020 within 200 m of the Wharf (Navy, 2021).

The Navy will implement a shutdown if porpoises are seen by PSOs entering or within any harassment zone in order to protect harbor porpoises from noise impacts. A monitor will be stationed at locations from which the injury and behavioral harassment zones for impact and vibratory pile driving are visible and will implement shutdown if a porpoise approaches or enters any harassment zone. With the implementation of monitoring, even if a harbor porpoise enters an injury zone, shutdown would occur before cumulative exposure to noise levels that would result in PTS could occur. Because pile driving will be shut down if porpoises are in the injury zone, no Level A harassment take has been requested or is proposed for authorization. In summary, the Navy has requested, and NMFS proposes, to authorize take of up to 640 harbor porpoises by Level B harassment (3 per year for work on concrete/fender piles and 125 per year from for work on steel piles) for the duration of the 5-year LOA.

California Sea Lion

California sea lions occur in Puget Sound from approximately August to June. This species occasionally hauls out on the port security barriers at NAVMAG Indian Island. These haulouts are adjacent to, in, or near the Level B harassment zones, so exposure may occur if animals move through Level B harassment zones during impact or

vibratory pile driving activities. California sea lions were not observed during previous pile driving monitoring at NAVMAG Indian Island ammunition wharf in 2014 to 2016 (Navy, 2014; Navy 2016), but one was observed during 2020 (Navy, 2021). Although calculated take was zero, reflecting their unlikely occurrence, Level B harassment exposures for the concrete and fender pile driving were estimated as one sea lion per year. Exposure estimates for vibratory driving of steel piles utilized the estimated exposure equation, resulting in estimated take of 17.88 sea lions per year, which was rounded up to 18 sea lion takes per year. Because a Level A harassment injury zone can be effectively monitored and a shutdown zone will be implemented, no take by Level A harassment is anticipated or proposed for authorization. Based on the aforementioned considerations, NMFS proposes to authorize take of 95 California sea lions (1 per year by work on concrete/fender piles and 18 per year from work on steel piles), by Level B harassment only, for the duration of the 5-year LOA.

Steller Sea Lion

Steller sea lions occur seasonally in Puget Sound primarily from September through May. Take may occur if these animals move through Level B harassment zones during impact or vibratory pile driving. Although their occurrence is unlikely, the Navy assumed that there would be one Level B harassment take from concrete and fender pile driving per year. Level B harassment exposure estimates for steel piles utilized the exposure estimate equation described previously using densities from Table 10 resulting in an estimated take of 5.16 animals per your rounded to 5 takes. Steller sea lions were not observed during previous monitoring at NAVMAG Indian Island ammunition wharf in 2014 to 2016 (Navy, 2014, 2016, 2021). Because the Level A harassment injury zone is small under all driving scenarios, it can be effectively monitored. A shutdown will be implemented if animals approach the injury zone and no exposure to Level A harassment noise levels is anticipated at any location. In summary, the Navy has requested, and NMFS proposes, to authorize take of up to 30 Steller sea lions (five for work on concrete/fender piles over 5 years and 25 for work on steel piles over 5 years) by Level B harassment for the duration of the 5-year LOA.

Northern Elephant Seal

Northern elephant seals are considered rare visitors to Puget Sound. No regular elephant seal haul outs occur in Puget Sound, although individual elephant seals have been detected hauling out for 2 to 4 weeks to molt, usually during the spring and summer. Haul out locations are unpredictable, but only one record is known for a Navy installation. The Navy reports a density of 0.0 in Puget Sound (Navy, 2020). However, because there are occasional sightings in Puget Sound, the Navy assumed that there would be one exposure from concrete/fender driving and one exposure from steel driving during each year of the LOA. Because elephant seals are rare in the project area and monitoring and shutdown measures will be implemented, no Level A harassment exposure is anticipated. In summary, the Navy has requested, and NMFS is proposing, to authorize take of up to 10 northern elephant seals (2 per year) by Level B harassment for the duration of the 5-year LOA.

Pacific Harbor Seal

Pacific harbor seals are expected to occur year-round at NAVMAG Indian Island. This species hauls out regularly at Rat Island adjacent to the northeastern end of NAVMAG Indian Island year-round with a dip in numbers in winter months. Harbor seals are most likely to be exposed to Level A harassment noise when they swim through the area near the Ammunition Wharf during impact pile driving (182 m for steel impact driving and 29 m for concrete impact driving). Pile driving will shutdown whenever a seal is detected by monitors nearing or within the injury zone, but harbor seals can dive for up to 15 minutes and may not be detected until they have been within the injury zone for a sufficient period of time to incur PTS. For most pile driving activities, exposure of harbor seals to pile driving noise will be limited to Level B harassment. Level B harassment exposure estimates for vibratory driving were determined using the formula of Level B harassment zone area × density × days of vibratory pile driving. The Navy has calculated take by Level B harassment of 1,710 harbor seals during vibratory installation of fender piles (342 per year), and 1,530 harbor seals during vibratory pile driving of steel piles (306 per year). Therefore, the Navy has requested, and NMFS proposes, to authorize take of up to 3,240 Pacific harbor seals by Level B harassment for the duration of the LOA. In addition, the Navy has requested and NMFS is proposing to authorize up to 135 harbor seal takes (27 per year) by Level A harassment during the 5-year LOA. This is based on the daily average of site-specific observations from several seasons of pile driving monitoring at the Ammunition Wharf and weekly surveys conducted at NAVMAG Indian Island provided above. Observations of seals within 29 m would be calculated to a mean of seals per day within the Level A harassment zone. (Using the density value would underestimate the number of seals in that small zone.) This assumption results in 11 Level A harassment takes per year (0.5 seals/day for 22 days) for impact driving of concrete piles (55 takes for 5 years) and 16 takes per year (8 seals/day for 2 days) for impact driving of steel piles (80 takes over 5 years).

The annual and total number of takes requested by the Navy and proposed for authorization by NMFS are shown in Table 11 and Table 12.

TABLE 11—PROPOSED ANNUAL TAKE BY LEVEL A AND LEVEL B HARASSMENT AND PERCENTAGE OF STOCK ABUNDANCE FOR AUTHORIZED SPECIES/STOCKS

Species	Exposures				Total annual	Population	Percent of stock/distinct population segmant (DPS) per year
	24 Inch concrete piles and/or 14-in/18.75-inch fender piles (up to 22 piles/year)		36 Inch steel piles (up to 2 piles/year)				
	Level B impact or vibratory	Level A Impact	Level B vibratory and impact	Level A impact			
Gray Whale	0	0	1	0	1	26,960	<0.01
Minke Whale	0	0	1	0	1	915	<0.01
Dall's Porpoise	3	0	3	0	3	16,498	<0.01
Harbor Porpoise	3	0	125	0	128	11,233	1.11
California Sea Lion	1	0	18	0	19	257,606	<0.01
Steller Sea Lion	1	0	5	0	6	43,201	<0.01

TABLE 11—PROPOSED ANNUAL TAKE BY LEVEL A AND LEVEL B HARASSMENT AND PERCENTAGE OF STOCK ABUNDANCE FOR AUTHORIZED SPECIES/STOCKS—Continued

Species	Exposures				Total annual	Population	Percent of stock/distinct population segmant (DPS) per year
	24 Inch concrete piles and/or 14-in/18.75-inch fender piles (up to 22 piles/year)		36 Inch steel piles (up to 2 piles/year)				
	Level B impact or vibratory	Level A Impact	Level B vibratory and impact	Level A impact			
Northern Elephant Seal	1	0	1	0	2	187,386	<0.01
Pacific Harbor Seal	342	11	306	16	675	11,036	6.11

TABLE 12—TOTAL 5-YEAR PROPOSED TAKES

[Level A Harassment and Level B Harassment]

Species	Stock	Level A harassment	Level B harassment	Total 5-year
Gray Whale	Eastern North Pacific	.....	5	5
Minke Whale	California/Oregon/Washington	.....	5	5
Dall's Porpoise	California/Oregon/Washington	.....	30	30
Harbor Porpoise	Washington Inland Waters	.....	640	640
California Sea Lion	United States	.....	95	95
Steller Sea Lion	Eastern United States	.....	30	30
Northern Elephant Seal	California Breeding	.....	10	10
Pacific Harbor Seal	Washington Northern Inland Waters	135	3,240	3,375

Proposed Mitigation

Under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations.

In order to limit impacts to marine mammals, vibratory installation will be used by the Navy to the extent practicable to drive steel piles to minimize high sound pressure levels associated with impact pile driving. Jetting will also be used to the extent possible to install concrete piles in order to minimize higher sound pressure levels associated with impact pile driving. Note that a draft monitoring plan will be submitted in the spring at least 90 days prior to the start of the in-water work period (October) during the first year of the project (2024). The final monitoring plan will be prepared and submitted to NMFS within 30 days following receipt of comments on the draft plan from NMFS.

The Navy will ensure that construction supervisors and crews, the monitoring team, and relevant Navy staff are trained and prior to the start of construction activity subject to this rule, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project will be trained prior to commencing work.

Shutdown Zones

Before the commencement of in-water construction activities, the Navy would establish shutdown zones for all impact and pile driving activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones will vary based on the activity type and marine mammal hearing group but will include all areas where the underwater sound pressure levels are anticipated to equal or exceed the Level A harassment (injury) criteria for marine mammals. The shutdown zone will always be a minimum of 10 m to prevent injury from physical interaction of marine mammals with construction equipment. The Level A harassment zones are based on the maximum calculated radius for pinnipeds and cetaceans, specifically harbor porpoises, during installation of 36-inch steel piles and 24-inch concrete piles with impact techniques, and the Level B harassment zone for impact and vibratory pile installation.

Injury to harbor seals from noise due to impact and vibratory pile driving and physical interaction with construction equipment will be minimized to the extent practicable by implementing a shutdown if the animals are observed to be swimming towards the injury zone. For steel pile impact driving, to the

extent possible, PSOs would initiate shutdown when harbor seals enter the injury zone; however, because of the size of the zone and the inherent difficulty in monitoring harbor seals, a highly mobile species, it may not be practical, which is why Level A harassment take is proposed for authorization.

The Navy would establish shutdown zones for all marine mammals for which take has not been authorized or for which incidental take has been authorized but the authorized number of takes has been met. These zones are equivalent to the Level B harassment zones for each activity. If such animals are sighted within the vicinity of the project areas and are approaching the Level B harassment zone, the Navy would shut down the pile driving equipment to avoid possible take of these species.

Pile driving activities will cease if any cetaceans authorized for take are seen approaching or entering any harassment zone. Work will be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the injury zone or visual portion of the Level B harassment zone or 15 minutes have passed without re-detection of the animal. Additionally, if a shutdown zone is obscured by fog or poor lighting conditions, pile driving will not be initiated until the entire shutdown zone is visible.

If a pinniped approaches or enters a shutdown zone during pile impact or vibratory driving, work will be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal. If a pinniped is observed in the Level B harassment zone, but not approaching or entering the shutdown zone, the work will be allowed to proceed without cessation of pile driving. Marine mammal behavior will be monitored and documented.

TABLE 13—SHUTDOWN AND HARASSMENT ZONES

Pile size and type	Shutdown zone (m)			Level B harassment zone (m)
	Cetaceans	Harbor seal	Sea lion	
24-inch Concrete Impact	90	30	10	90
36-inch Steel Impact	400	200	20	400
36-inch Steel Vibratory	13,600	10	10	13,600
Fender Vibratory	1,000	10	10	1,000

At minimum, the shutdown zone for all hearing groups and all activities would be 10 m. For in-water heavy machinery work other than pile driving (*e.g.,* standard barges, *etc.*), if a marine mammal comes within 10 m, operations would cease and vessels would reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include, for example, the movement of the barge to the pile location or positioning of the pile on the substrate via a crane.

Pre-Activity Monitoring

Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, PSOs would observe the shutdown and Level B harassment zones for a period of 30 minutes. The shutdown zone would be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zones listed in Table 13, pile driving activity would be delayed or halted. If pile driving is delayed or halted due to the presence of a marine mammal, the activity would not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zones or 15 minutes have passed without re-detection of the animal. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones would commence. A determination that the shutdown zone is clear must be made during a period of good visibility (*i.e.,* the entire shutdown zone and surrounding waters must be visible to the naked eye).

Monitoring will take place from 30 minutes prior to initiation through 30 minutes post-completion of pile driving. Prior to the start of pile driving, the shutdown zone will be monitored for 30 minutes to ensure that the shutdown zone is clear of marine mammals. Pile driving will only commence once PSOs have declared the shutdown zone clear of marine mammals.

Soft Start

Soft-start procedures are used to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors would be required to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. Soft start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

Bubble Curtain

Should the use of 36-inch steel piles be necessary, a bubble curtain will be used for all impact driving of steel piles to attenuate noise. Because of the relatively low underwater noise levels associated with impact driving of concrete piles, bubble curtains are not proposed for impact installation of concrete piles.

A bubble curtain would be employed during impact installation or proofing of steel pile where water depths are greater than 0.67 m. A noise attenuation device would not be required during vibratory pile driving. If a bubble curtain or similar measure is used, it would distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column. A bubble curtain is usually a ring or series of stacked rings that are placed around a pile along the pile's entire length under water. The rings are made of tubing which has small puncture holes through which compressed air is pumped. As the compressed air bubbles flow from the tubing, they create an air barrier that impedes the sound produced during pile driving. Any other attenuation measure would be required to provide 100 percent coverage in the water column for the full depth of the pile. The lowest bubble ring would be in contact with the mudline for the full circumference of the ring. The weights attached to the bottom ring would ensure 100 percent mudline contact. No

parts of the ring or other objects would prevent full mudline contact.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an LOA for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

The Navy will submit a Marine Mammal Monitoring Plan to NMFS for approval at least 90 days in advance of the start of the first year of construction.

Visual Monitoring

- Monitoring must be conducted during pile driving activities by qualified, NMFS-approved PSOs, in accordance with the following conditions: PSOs must be independent of the activity contractor (for example, employed by a subcontractor) and have no other assigned tasks during monitoring periods.
- At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.
- Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.
- Where a team of three or more PSOs is required, a lead PSO or monitoring coordinator must be designated. The lead PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.
- PSOs must be approved by NMFS prior to beginning any activity subject to this proposed rule.

All PSOs shall be trained in marine mammal identification and behaviors, and satisfy the following criteria:

- Visual acuity in both eyes (correction is permissible) sufficient to discern moving targets at the water's surface with ability to estimate target size and distance. Use of binoculars or spotting scope may be necessary to correctly identify the target.
- Advanced education in biological science, wildlife management, mammalogy or related field (Bachelor's degree or higher is preferred).
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience).
- Experience or training in the field identification of marine mammals (cetaceans and pinnipeds).
- Sufficient training, orientation or experience with vessel operation and pile driving operations to provide for personal safety during observations.
- Writing skills sufficient to prepare a report of observations. Reports should include such information as the number, type, and location of marine mammals observed; the behavior of marine mammals in the area of potential sound effects during construction; dates and times when observations and in-water construction activities were conducted; dates and times when in-water construction activities were suspended because of marine mammals, *etc.*
- Ability to communicate orally, by radio or in person, with project personnel to provide real time information on marine mammals observed in the area and necessary actions, as needed.

During pile driving activities, the Navy will assign PSOs to monitor the identified harassment zones. The number and placement of PSOs will vary depending upon the pile size, location, and number of piles being installed or removed. In order to effectively monitor the shutdown and Level B harassment zones, PSOs will be positioned at the best practicable vantage points, taking into consideration security, safety, and space limitations. The PSOs will be stationed on the pier, vessel, on shore, or on the pile driving barge in a location that will provide adequate visual coverage for the identified harassment zones. During pile driving, at least one PSO will be stationed on a vessel if practicable.

Monitoring would be conducted 30 minutes before, during, and 30 minutes after all in water construction activities. In addition, PSOs would record all incidents of marine mammal occurrence, regardless of distance from activity, and would document any behavioral reactions in concert with distance from piles being driven or removed.

Reporting

The Navy must submit a draft monitoring report to NMFS within 90 calendar days of the completion of each construction year. A draft comprehensive 5-year summary report must also be submitted to NMFS within 90 days of the end of the project. The reports must detail the monitoring protocol and summarize the data recorded during monitoring. Final annual reports and the final comprehensive report must be prepared and submitted within 30 days following resolution of any NMFS comments on the draft report. If no comments are received from NMFS within 30 days of receipt of the draft report, the report must be considered final. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of

comments. The marine mammal report would include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report would include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including: (a) How many and what type of piles were driven or removed and the method (*i.e.,* impact or vibratory); and (b) the total duration of time for each pile (vibratory driving) number of strikes for each pile (impact driving);
- PSO locations during marine mammal monitoring; and
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance.

In addition, for each observation of a marine mammal, the marine mammal report would include the following information:

- Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting;
- Time of sighting;
- Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;
- Distance and location of each observed marine mammal relative to the pile being driven for each sighting;
- Estimated number of animals (min/max/best estimate);
- Estimated number of animals by cohort (adults, juveniles, neonates, group composition, *etc.*);
- Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);
- Number of marine mammals detected within the harassment zones, by species; and
- Detailed information about implementation of any mitigation (*e.g.,* shutdowns and delays), a description of specified actions that ensued, and resulting changes in behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days, the draft reports would constitute the final reports. If comments are received, a final report addressing NMFS' comments would be required to be submitted within 30 days after receipt of comments. All PSO datasheets and/or raw sighting data would be submitted with the draft marine mammal report.

Reporting of Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the Navy must report the incident to NMFS Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov*), NMFS (301–427–8401) and to the NMFS Northwest Regional Stranding Coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, the Navy must immediately cease the specified activities until NMFS OPR is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of this rule. The Navy will not resume their activities until notified by NMFS. The report must include the following information:

1. Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
2. Species identification (if known) or description of the animal(s) involved;
3. Condition of the animal(s) (including carcass condition if the animal is dead);
4. Observed behaviors of the animal(s), if alive;
5. If available, photographs or video footage of the animal(s); and
6. General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be taken through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to the species listed in Table 12, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences among species, stocks, or groups of species, anticipated responses of individual animals to activities, and/or impacts of expected take on the population (due to differences in population status, or impacts on habitat), the outliers are described independently in the analysis below.

Pile driving activities associated with the project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level A and Level B harassment from underwater sounds generated by pile driving. Potential takes could occur if marine mammals are present in zones ensonified above the thresholds for Level A and Level B harassment, identified above, while activities are underway.

No serious injury or mortality would be expected even in the absence of the proposed mitigation measures. During all impact driving, implementation of soft-start procedures and monitoring of established shutdown zones will be required, significantly reducing the possibility of injury. Given sufficient notice through use of soft-start (for impact driving), marine mammals are expected to move away from an irritating sound source before it becomes potentially injurious. In addition, PSOs will be stationed within the project area whenever pile driving activities are underway. Depending on the activity, the Navy will employ land-based PSOs to ensure all monitoring and shutdown zones are properly observed.

For monitoring of larger harassment zones, the Navy would employ vessel-based PSOs if practicable. Some harbor seals could be exposed to Level A harassment levels of noise when they swim through the area near the Ammunition Wharf during impact pile driving. Pile driving will shut down whenever a seal is detected by PSOs nearing or within the injury zone, but harbor seals can dive for up to 15 minutes and may not be detected. Any animals that experience PTS would likely only receive slight PTS, *i.e.,* minor degradation of hearing capabilities within regions of hearing that align most completely with the frequency range of the energy produced by pile driving (*i.e.,* the low-frequency region below 2 kHz), not severe hearing impairment or impairment in the range of greatest hearing sensitivity. If hearing impairment does occur, it is most likely that the affected animal would lose a few dBs in its hearing sensitivity, which, in most cases, is not likely to meaningfully affect its ability to forage and communicate with conspecifics. As described above, we expect that, given sufficient notice through use of soft-start, marine mammals would be likely to move away from a sound source that represents an aversive stimulus, especially when the sound source is at levels that would be expected to result in PTS. For most pile driving activities, exposure of harbor seals to pile driving noise will be minimized to short-term behavioral harassment (Level B harassment).

Exposures to elevated sound levels produced during pile driving activities may cause behavioral disturbance of some individuals, but the behavioral disturbances are expected to be mild and temporary. However, as described previously, the mitigation and monitoring measures are expected to further reduce the likelihood of injury as well as reduce behavioral disturbances.

Effects on individuals that are taken by Level B harassment, as enumerated in the Estimated Take section, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff, 2006). Most likely, individual animals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. The pile driving activities analyzed here are similar to, or less impactful than, numerous other construction activities conducted along both Atlantic and Pacific coasts, which have taken place with no known long-term adverse consequences from behavioral harassment. These reactions and behavioral changes are expected to subside quickly when the exposures cease. Level B harassment will be minimized through use of mitigation measures described herein, and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring, particularly as the project is located on a waterfront with vessel traffic from both Navy and non-Navy activities.

The project is also not expected to have significant adverse effects on any marine mammal habitat. The Navy's proposed pile driving activities and associated impacts will occur within a limited portion of the confluence of the Puget Sound-Port Townsend Bay area. The project activities will not modify existing marine mammal habitat since the project will occur within the same footprint as existing marine infrastructure. Impacts to the immediate substrate during installation and removal of piles are anticipated, but these would be limited to minor, temporary suspension of sediments, which could impact water quality and visibility for a short amount of time, but which would not be expected to have any effects on individual marine mammals. The nearshore and intertidal habitat where the project will occur is an area of consistent vessel traffic from Navy and non-Navy vessels, and some local individuals would likely be somewhat habituated to the level of activity in the area, further reducing the likelihood of more severe impacts. The closest pinniped haulout, Rat Island, is used by harbor seals and is 2.4 km from the Ammunition Wharf. However, for the reasons described immediately above (including the nature of expected responses and the duration of the project), impacts to reproduction or survival of individuals are not anticipated, and are not expected to have effects on the species or stock. There are no other biologically important areas for marine mammals near the project area.

Impacts to marine mammal prey species are expected to be minor and temporary. Overall, the area impacted by the project is very small compared to the available habitat in Port Townsend Bay and larger Puget Sound. The most likely impact to prey will be temporary behavioral avoidance of the immediate area. During pile driving activities, it is expected that some fish and marine mammals would temporarily leave the area of disturbance, thus impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- No Level A harassment is anticipated or authorized with the exception of limited take of harbor seals;
- Anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior;
- The required mitigation measures (*i.e.,* shutdown zones) are expected to be effective in reducing the effects of the specified activity;
- Minimal impacts to marine mammal habitat/prey are expected; and
- There are no known biologically important areas in the vicinity of the project, with the exception of one harbor seal haulout (Rat Island). However, as described above, exposure to the work conducted in the vicinity of the haulout is not expected to impact the reproduction or survival of any individual seals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the

predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Take of eight marine mammal stocks proposed for authorization will comprise no more than 6.11 percent of a single stock abundance (Pacific harbor seal) as shown in Table 11. The number of animals proposed for authorization to be taken from these stocks would be considered small relative to the relevant stock's abundances even if each estimated take occurred to a new individual, which is an unlikely scenario. Based on the analysis contained herein of the proposed activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Adaptive Management

The regulations governing the take of marine mammals incidental to Navy construction activities would contain an adaptive management component. The reporting requirements associated with this rule are designed to provide NMFS with monitoring data from completed projects to allow consideration of whether any changes are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from the Navy regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from monitoring reports, as required by MMPA authorizations; (2) results from general marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or LOAs issues pursuant to these regulations.

Endangered Species Act

Section 7(a)(2) of the ESA of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of proposed rules, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the NMFS West Coast Regional Office.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Request for Information

NMFS requests interested persons to submit comments, information, and suggestions concerning the Navy request and the proposed regulations (see **ADDRESSES**). All comments will be reviewed and evaluated as we prepare a final rule and make final determinations on whether to issue the requested authorization. This proposed rule and referenced documents provide all environmental information relating to our proposed action for public review.

Classification

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Navy is the sole entity that would be subject to the requirements in these proposed regulations, and the Navy is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

This proposed rule does not contain a collection-of-information requirement subject to the provisions of the Paperwork Reduction Act (PRA) because the applicant is a Federal agency.

Dated: October 23, 2023.

Jonathan M. Kurland,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

List of Subjects in 50 CFR Part 217

Administrative practice and procedure, Exports, Fish, Imports, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation, Wildlife.

For reasons set forth in the preamble, NMFS proposed to revise subpart of 50 CFR part 217 as follows:

PART 217—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.,* unless otherwise noted.

■ 2. Revised subpart I to part 217 to read as follows:

Subpart I—Taking and Importing Marine Mammals Incidental to U.S. Navy Construction at the Naval Magazine Indian Island Ammunition Wharf, Puget Sound, Washington

Sec.

217.80 Specified activity and geographical region.
217.81 Effective dates.
217.82 Permissible methods of taking.
217.83 Prohibitions.
217.84 Mitigation requirements.
217.85 Requirements for monitoring and reporting.
217.86 Letters of Authorization.
217.87 Renewals and modifications of Letters of Authorization.
217.88–217.289 [Reserved]

§ 217.80 Specified activity and geographical region.

(a) Regulations in this subpart apply only to the U.S. Navy (Navy) and those persons it authorizes or funds to conduct activities on its behalf for the taking of marine mammals that occur in the areas outlined in paragraph (b) of this section and that occur incidental to construction activities, including maintenance and replacement of piles, at the Naval Magazine Indian Island Ammunition Wharf, Puget Sound, Washington.

(b) The taking of marine mammals by the Navy may be authorized in a Letter

of Authorization (LOA) only if it occurs at the Naval Magazine Indian Island Ammunition Wharf, Puget Sound, Washington.

§ 217.81 Effective dates.

Regulations in this subpart are effective from October 1, 2024, until September 30, 2029.

§ 217.82 Permissible methods of taking.

Under an LOA issued pursuant to § 216.106 of this chapter and § 217.86, the Holder of the LOA (hereinafter ''Navy'') may incidentally, but not intentionally, take marine mammals within the area described in § 217.80(b) by harassment associated with construction activities, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the applicable LOA.

§ 217.83 Prohibitions.

(a) Except for the takings contemplated in § 217.82 and authorized by a LOA issued under § 216.106 of this chapter and § 217.86, it is unlawful for any person to do any of the following in connection with the activities described in § 217.80:

(1) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under § 216.106 of this chapter and § 217.86;

(2) Take any marine mammal not specified in such LOA;

(3) Take any marine mammal specified in such LOA in any manner other than as specified;

(4) Take a marine mammal specified in such LOA if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(5) Take a marine mammal specified in such LOA after NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

(b) [Reserved]

§ 217.84 Mitigation requirements.

(a) When conducting the activities identified in § 217.80(a), the mitigation measures contained in any LOA issued under §§ 216.106 of this chapter and 217.86 must be implemented. These mitigation measures include but are not limited to:

(1) A copy of any issued LOA must be in the possession of the Navy, its designees, and work crew personnel operating under the authority of the issued LOA.

(2) The Navy must follow mitigation procedures as described in § 217.84. Protected Species Observers (PSOs) must monitor the designated harassment zones to the maximum extent possible based on daily visibility conditions.

(3) The Navy must ensure that construction supervisors and crews, the PSO team, and relevant Navy staff are trained prior to the start of construction activity subject to this rule, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work.

(4) The Navy must avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 m of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary, to avoid direct physical interaction.

(5) For all pile driving activity, the Navy must implement shutdown zones with radial distances as identified in a LOA issued under § 216.106 of this chapter and § 217.86. If a marine mammal comes within or approaches the shutdown zone, pile driving activity must cease.

(6) The Navy must shut down in-water activities when cetaceans are observed approaching or within any harassment zone.

(7) The Navy must use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period. Then two subsequent reduced-energy strike sets would occur. A soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

(8) The Navy must deploy PSOs as indicated in its Marine Mammal Monitoring Plan that has been approved by NMFS.

(9) The Navy must employ bubble curtain systems during impact driving of 36-inch steel piles except under conditions where the water depth is less than 0.67 meters (2 feet) in depth. Bubble curtains must meet the following requirements:

(i) The bubble curtain must distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column.

(ii) The lowest bubble ring must be in contact with the mudline and/or rock bottom for the full circumference of the ring, and the weights attached to the bottom ring shall ensure 100 percent mudline and/or rock bottom contact. No parts of the ring or other objects shall prevent full mudline and/or rock bottom contact.

(iii) The bubble curtain must be operated such that there is equal balancing of air flow to all bubblers.

(10) For all pile driving activities, land-based PSOs must be stationed at the best vantage points practicable to monitor for marine mammals and implement shutdown/delay procedures. At least one vessel-based PSO must be employed when practicable. Additional PSOs must be added if warranted by site conditions and/or the level of marine mammal activity in the area.

(11) Monitoring must take place from 30 minutes prior to initiation of pile driving activity (*i.e.,* pre-start clearance monitoring) through 30 minutes post-completion of pile driving activity. Pre-activity monitoring must be conducted for 30 minutes to ensure that the shutdown zone is clear of marine mammals, and pile driving may commence when PSOs have declared the shutdown zone clear of marine mammals. In the event of a delay or shutdown of activity resulting from marine mammals in the shutdown zone, animals must be allowed to remain in the shutdown zone (*i.e.,* must leave of their own volition) and their behavior must be monitored and documented. If a marine mammal is observed within the shutdown zone, a soft start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. Monitoring must occur throughout the time required to drive a pile. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones must commence. A determination that the shutdown zone is clear must be made during a period of good visibility.

(12) If a marine mammal approaches or enters the shutdown zone, all pile driving activities at that location must be halted. If pile driving is halted or delayed due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal.

(13) Pile driving activity must be halted upon observation of a species entering or within the harassment zone for either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met.

(14) Trained PSOs must be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator.

(15) Monitoring must be conducted by qualified, NMFS-approved PSOs, in accordance with the following conditions:

(i) PSOs must be independent of the activity contractor (for example, employed by a subcontractor) and have no other assigned tasks during monitoring periods.

(ii) At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.

(iii) Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.

(iv) Where a team of three or more PSOs are required, a lead PSO or monitoring coordinator must be designated. The lead PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.

(v) PSOs must be approved by NMFS prior to beginning any activity subject to these regulations.

(b) [Reserved]

§ 217.85 Requirements for monitoring and reporting.

(a) The Navy must submit a Marine Mammal Monitoring Plan to NMFS for approval at least 90 days before the start of construction and abide by the Plan if approved.

(b) The Navy must deploy PSOs as indicated in its approved Marine Mammal Monitoring Plan.

(c) PSOs must be trained in marine mammal identification and behaviors. PSOs must have no other construction-related tasks while conducting monitoring.

(d) The Navy must monitor the Level B harassment zones (areas where SPLs are equal to or exceed the 160 dB root-mean-squared (rms) threshold for impact driving and the 120 dB rms threshold during vibratory pile driving) to the maximum extent practicable and the shutdown zones.

(e) The Navy must coordinate with the Center for Whale Research, Orca network, and NMFS to avoid noise exposure of southern resident killer whales. The Navy must shut down in-water activities when southern resident killer whales are observed or reported within or approaching any harassment zone.

(f) The Navy must submit a draft monitoring report to NMFS within 90 calendar days of the completion of each construction year. A draft comprehensive 5-year summary report must also be submitted to NMFS within 90 days of the end of the project. The reports must detail the monitoring protocol and summarize the data recorded during monitoring. Final annual reports and the final comprehensive report must be prepared and submitted within 30 days following resolution of any NMFS comments on the draft report. If no comments are received from NMFS within 30 days of receipt of the draft report, the report must be considered final. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments. The reports must contain the informational elements described at minimum below including:

(1) Dates and times (begin and end) of all marine mammal monitoring;

(2) Construction activities occurring during each daily observation period, including how many and what type of piles were driven or removed, by what method (*i.e.,* impact or vibratory), the total duration of driving time for each pile (vibratory driving), and number of strikes for each pile (impact driving);

(3) Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), Beaufort sea state, and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance (if less than the harassment zone distance);

(4) Upon observation of a marine mammal, the following information should be collected:

(i) PSO who sighted the animal, observer location, and activity at time of sighting:

(ii) Time of sighting;

(iii) Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;

(iv) Distances and bearings of each marine mammal observed in relation to the pile being driven for each sighting (if pile driving was occurring at time of sighting);

(v) Estimated number of animals (min/max/best);

(vi) Estimated number of animals by cohort (adults, juveniles, neonates, group composition, *etc.*);

(vii) Animal's closest point of approach and estimated time spent within the harassment zone;

(viii) Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses to the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

(ix) Detailed information about any implementation of any mitigation (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting changes in the behavior of the animal, if any; and

(x) All PSO datasheets and/or raw sightings data.

(g) In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the Navy must report the incident to NMFS Office of Protected Resources (OPR), and to the West Coast Regional Stranding Coordinator, as soon as feasible. If the death or injury was caused by the specified activity, the Navy must immediately cease the specified activities until NMFS OPR is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of this rule and the LOA issued under § 216.106 of this chapter and § 217.86. The Navy must not resume their activities until notified by NMFS. The report must include the following information:

(1) Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

(2) Species identification (if known) or description of the animal(s) involved;

(3) Condition of the animal(s) (including carcass condition if the animal is dead);

(4) Observed behaviors of the animal(s), if alive;

(5) If available, photographs or video footage of the animal(s); and

(6) General circumstances under which the animal was discovered.

§ 217.86 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, the Navy must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, the

Navy may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, the Navy must apply for and obtain a modification of the LOA as described in § 217.87.

(e) The LOA must set forth the following information:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA must be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA must be published in the **Federal Register** within 30 days of a determination.

§ 217.87 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 of this chapter and 217.86 for the activity identified in § 217.80(a) may be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations; and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under § 216.106 of this chapter and § 217.86 for the activity identified in § 217.80(a) may be modified by NMFS under the following circumstances:

(1) NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with Navy regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations;

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from Navy's monitoring from previous years;

(B) Results from other marine mammal and/or sound research or studies; and

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs; and

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS must publish a notice of proposed LOA in the **Federal Register** and solicit public comment;

(2) If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in a LOA issued pursuant to § 216.106 of this chapter and § 217.86, a LOA may be modified without prior notice or opportunity for public comment. Notification would be published in the **Federal Register** within 30 days of the action.

§§ 217.88–217.89 [Reserved]

[FR Doc. 2023–23737 Filed 10–27–23; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 88, No. 208
Monday, October 30, 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

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by November 29, 2023 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number, and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Imported Seed and Screening.

OMB Control Number: 0579–0124.

Summary of Collection: The United States Department of Agriculture (USDA) is responsible for preventing plant diseases or insect pests from entering the United States, preventing the spread of pests not widely distributed in the United States, and eradicating imported pests when eradication is feasible. Under the authority of the Federal Seed Act of 1939, as amended, the USDA regulates the importation and interstate movement of certain agricultural and vegetable seeds. The USDA Animal & Plant Health Inspection Service (APHIS) Plant Protection and Quarantine (PPQ) Division has established a seed analysis program with Canada that allows U.S. companies that import seed for cleaning or processing to enter into compliance agreements with APHIS. To monitor and ensure compliance with United States agricultural regulations, APHIS will collect information using forms and other information activities.

Need and Use of the Information: APHIS will collect information from forms, correspondence, inspections, and discussions to ensure imported seeds do not pose a threat to U.S. agriculture. If the information were not collected, there would be increased risk of severe economic damage to United States agriculture caused by plant diseases and insect pests.

Description of Respondents: Business or other for-profit; Federal Government.

Number of Respondents: 1,153.

Frequency of Responses: Recordkeeping: Reporting: On occasion.

Total Burden Hours: 9,632.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–23825 Filed 10–27–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by November 29, 2023 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number, and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Volunteer Service Agreements and Volunteer Service Time and Attendance Record.

OMB Control Number: 0579–0477.

Summary of Collection: Section 1526 of the Agriculture and Food Act of 1981 [7 U.S.C. 2272] permits the Secretary of Agriculture to establish a program to use volunteers in carrying out programs of the United States Department of Agriculture (USDA).

The regulations in title 5 Code of Federal Regulations (CFR), Administrative Personnel, part 308, authorizes an agency to establish

programs designed to provide educationally related volunteer assignments for students.

APHIS will collect information using MRP forms, 126A, Student Service Agreement and Recordkeeping; MRP 126B, Nonstudent Volunteer Service Agreement; and MRP 126C, Volunteer Time and Attendance Record.

Need and Use of the Information: This information collection is necessary to: (a) facilitate establishment of guidelines for acceptance of volunteer services under the above authorities; (b) make a determination of individuals' eligibility and suitability to serve as a volunteer in the Marketing and Regulatory Programs (MRP), USDA; and (c) comply with the Office of Personnel Management (OPM) regulation to require documentation of volunteer service. If this information collection is not conducted, MRP would not be able to determine the individual's eligibility and suitability to serve as a volunteer.

Description of Respondents: Individuals or households and businesses.

Number of Respondents: 86.

Frequency of Responses: Reporting; On occasion; Quarterly.

Total Burden Hours: 151.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–23892 Filed 10–27–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket ID: NRCS–2023–0019]

Urban Agriculture and Innovative Production Advisory Committee Meeting

AGENCY: Natural Resources Conservation Service (NRCS), United States Department of Agriculture (USDA).

ACTION: Notice of public and virtual meeting.

SUMMARY: The Natural Resources Conservation Service (NRCS) will hold a public meeting of the Urban Agriculture and Innovative Production Advisory Committee (UAIPAC). UAIPAC will convene to discuss proposed recommendations for the Secretary of Agriculture on the development of policies and outreach relating to urban, indoor, and other emerging agriculture production practices. UAIPAC is authorized under the Agriculture Improvement Act of 2018 (2018 Farm Bill) and operates in compliance with the Federal Advisory Committee Act, as amended.

DATES:

Meeting: The UAIPAC meeting will be held on Wednesday, November 29, 2023, from 1 p.m. to 3 p.m. Eastern Daylight Time (EDT).

Written Comments: Written comments will be accepted until 11:59 p.m. EDT on Wednesday, December 13, 2023.

ADDRESSES:

Meeting Location: The meeting will be held virtually via Zoom Webinar. Pre-registration is required to attend the UAIPAC meeting and access informaton will be provided to registered individuals via email. Registration details can be found at: *https://www.usda.gov/partnerships/federal-advisory-committee-urban-ag.*

Written Comments: We invite you to send comments in response to this notice. Go to *https://www.regulations.gov* and search for Docket ID NRCS–2023–0019. Follow the instructions for submitting comments. All written comments received will be publicly available on *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Brian Guse; Designated Federal Officer; telephone: (202) 205–9723; email: *UrbanAgricultureFederalAdvisoryommittee@usda.gov*.

Individuals who require alternative means for communication may contact the USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

UAIPAC Purpose

The Federal Advisory Committee for Urban Agriculture and Innovative Production is one of several ways that USDA is extending support and building frameworks to support urban agriculture, including issues of equity and food and nutrition access. Section 222 of the Department of Agriculture Reorganization Act of 1994, as amended by section 12302 of the 2018 Farm Bill (7 U.S.C. 6923; Pub. L. 115–334) directed the Secretary to establish an ''Urban Agriculture and Innovative Production Advisory Committee'' to advise the Secretary of Agriculture on any aspect of section 222, including the development of policies and outreach relating to urban, indoor, and other emerging agricultural production practices as well as identify any barriers to urban agriculture. UAIPAC will host public meetings to deliberate on recommendations for the Secretary of Agriculture. These recommendations provide advice to the Secretary on supporting urban agriculture and innovative production through USDA's programs and services.

Meeting Agenda

The agenda items may include, but are not limited to, welcome and introductions; administrative matters; presentations from the UAIPAC or USDA staff; and deliberations for proposed recommendations and plans. The USDA UAIPAC website (*https://www.usda.gov/partnerships/federal-advisory-committee-urban-ag*) will be updated with the final agenda at least 24 hours prior to the meeting.

Written Comments

Comments should address specific topics pertaining to urban agriculture and innovative production. Written comments will be accepted until 11:59 p.m. EDT on Wednesday, December 13, 2023. General questions and comments are also accepted at any time via email: *UrbanAgricultureFederalAdvisoryCommittee@usda.gov.*

Meeting Materials

All written comments received by Wednesday, December 13, 2023, will be compiled for UAIPAC review and will be included in the meeting minutes. Duplicate comments from multiple individuals will appear as one comment, with a notation that multiple copies of the comment were received. Please visit *https://www.usda.gov/partnerships/federal-advisory-committee-urban-ag* to view the agenda and minutes from the meeting.

Meeting Accomodations

If you require 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. Determinations for reasonable accommodation will be made on a case-by-case basis.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender

expression), sexual orientation, disability, age, marital status, family or 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.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunicaions Relay Service (both voice and text telephone users can initiate this call from any phone). Additionally, program information may be made available in languages other than English.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the FACA Committee: UAIPAC. To ensure that the recommendations of UAIPAC have taken in account the needs of the diverse groups served by USDA, membership will include to the extent possible, individuals with demonstrated ability to represent minorities, women and person with disabilities. USDA is an equal opportunity provider, employer, and lender.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or email: *OAC@usda.gov.USDA* is an equal opportunity provider, employer, and lender.

Dated: October 25, 2023.

Cikena Reid,

Committee Management Officer, USDA.

[FR Doc. 2023–23877 Filed 10–27–23; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket No. RUS–23–ELECTRIC–0016]

Notice of a Revision to a Currently Approved Information Collection

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Utilities Service's (RUS or Agency), an agency within the United States Department of Agriculture, Rural Development, intention to request a revision to a currently approved information collection package for the Rural Energy Savings Program (RESP). In accordance with the Paperwork Reduction Act of 1995, the Agency invites comments on this information collection for which it intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by December 29, 2023 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Pamela Bennett, Rural Development Innovation Center—Regulations Management Division, USDA, 1400 Independence Avenue SW, STOP 1522, South Building, Washington, DC 20250–1522. Telephone: (202) 720–9639. Email *pamela.bennett@usda.gov.*

SUPPLEMENTARY INFORMATION: The 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 an information collection that RUS is submitting to OMB for extension of an existing collection.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent by the Federal eRulemaking Portal: Go to *https://www.regulations.gov* and, in the ''Search'' box, type in the Docket No. RUS–23–ELECTRIC–0016. A link to the Notice will appear. You may submit a comment here by selecting the ''Comment'' button or you can access the ''Docket'' tab, select the ''Notice,'' and go to the ''Browse & Comment on Documents'' Tab. Here you may view comments that have been submitted as well as submit a comment. To submit a comment, select the ''Comment'' button, complete the required information, and select the ''Submit Comment'' button at the bottom. 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 at the bottom.

A Federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, failure to provide data could result in program benefits being withheld or denied.

Title: Rural Energy Savings Program.

OMB Control Number: 0572–0151.

Type of Request: Extension of a currently approved information collection.

Abstract: The USDA, through the RUS, provides RESP loans to eligible entities that agree to, in turn, make loans to qualified consumers such as rural families and small businesses for energy efficiency measures and cost-effective renewable energy or energy storage systems. These loans are made available under the authority of section 6407 of the Farm Security and Rural Investment Act of 2002, as amended, (section 6407) and title VII, section 741 of the Consolidated Appropriations Act, 2018. Eligible energy efficiency measures must be for or at a property or properties served by a RESP borrower, using commercially available technologies that would allow qualified consumers to decrease their energy use or costs through cost-effective measures including structural improvements to the structure. Loans made by RESP

borrowers under this program may be repaid through charges added to the qualified consumer's bill for the property or properties for, or at which, energy efficiencies are or will be implemented.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 7.567 hour per response.

Respondents: Non-profit institutions.

Estimated Number of Respondents: 9.

Estimated Total Annual Responses: 112.

Estimated Number of Responses per Respondent: 12.44.

Estimated Total Annual Burden on Respondents: 848 hours.

Copies of this information collection can be obtained from Pamela Bennett, Rural Development Innovation Center—Regulations Management Division, USDA, 1400 Independence Avenue SW, South Building, Washington, DC 20250–1522. Telephone: (202) 720–9639. Email: *pamela.bennett@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. 2023–23845 Filed 10–27–23; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Florida Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Florida Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom at 2:00 p.m. ET on Thursday, November 16, 2023. The purpose of the meeting is to discuss post-report activities and consider the Committee's next topic of study.

DATES: Thursday, November 16, 2023, from 2 p.m.–3 p.m. Eastern Time.

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual): https://www.zoomgov.com/j/1613114527.

Join by Phone (Audio Only): (833) 435–1820 USA Toll-Free; Meeting ID: 161 311 4527.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, Designated Federal Officer, at *mwojnaroski@usccr.gov* or (202) 618–4158.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available. Individuals with disabilities who would like to request additional accommodations should email *lschiller@usccr.gov* at least 10 business days prior to the meeting to make their request.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Liliana Schiller at *lschiller@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Florida Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *lschiller@usccr.gov.*

Agenda

I. Welcome & Roll Call
II. Committee Discussion
III. Public Comment
IV. Next Steps
V. Adjournment

Dated: October 25, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–23890 Filed 10–27–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Arizona Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual briefing.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a briefing of the Arizona Advisory Committee (Committee) to the U.S. Commission on Civil Right will convene via ZoomGov on Monday, November 27, 2023, from 1 p.m.–3:30 p.m. Arizona Time. The purpose of the briefing is to collect testimony related to racial and ethnic disparities in pediatric healthcare in the state.

DATES: The briefing will take place on:

- Monday, November 27, 2023, from 1 p.m.–3:30 p.m. Arizona Time.

ADDRESSES:

Zoom Link to Join (Audio/Visual): https://www.zoomgov.com/meeting/register/vJIsf-Gprz0vHYz7ADDUf0GbfbI_gbJdNtU.

Telephone (Audio Only) Dial: 1–833–435–1820 (US Toll-free); Meeting ID: 161 881 1657#.

FOR FURTHER INFORMATION CONTACT: Kayla Fajota, DFO, at *kfajota@usccr.gov* or (434) 515–2395.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the videoconference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Angelica Trevino, Support Services Specialist, at *atrevino@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be

received in the Regional Programs Unit within 30 days following the meeting. Written comments can be sent via email to Kayla Fajota (DFO) at *kfajota@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzl2AAA.*

Please click on the ''Committee Meetings'' tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome Remarks and Roll Call
II. Opening Remarks
III. Panelist Presentations
IV. Committee Question & Answer
V. Public Comment
VI. Adjournment

Dated: October 25, 2023,

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–23891 Filed 10–27–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Arkansas Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Arkansas Advisory Committee (Committee) will hold a virtual meeting Monday, November 6, 2023 at 12:00 p.m. Central Time. The purpose of the meeting is to select the Committee's next project topic for civil rights study.

DATES: The meeting will be held on Monday November 6, 2023 at 12:00 p.m. Central Time.

Web Access (audio/visual): Register at: *https://www.zoomgov.com/j/1615227807?pwd=MzkvazFIWW9ZblVreG5YZ3ZyM05yQT09.*

Phone Access (audio only): 833–435–1820, Meeting ID: 161 522 7807.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, Designated Federal Officer, at *mwojnaroski@usccr.gov* or (202) 618–4158.

SUPPLEMENTARY INFORMATION: Members of the public may join online or listen to this discussion through the above registration link or call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Closed captions will be provided. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Melissa Wojnaroski at *mwojnaroski@usccr.gov.*

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Arkansas Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Discussion of Other Civil Rights Topics in the State
III. Next Steps
IV. Public Comment
V. Adjournment

Exceptional Circumstance: Due to the exceptional circumstance of the upcoming expiration of the current Committee appointment term and the resulting timeline under which the Committee must complete its next and final project.

Dated: October 24, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–23802 Filed 10–27–23; 8:45 am]

BILLING CODE 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; High-Frequency Surveys Program/Household Pulse Survey

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on August 17, 2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau, Department of Commerce.

Title: High Frequency Surveys Program/Household Pulse Survey.

OMB Control Number: 0607–XXXX.

Form Number(s): None.

Type of Request: Regular submission, New Information Collection Request.

Number of Respondents: 198,450.

Average Hours per Response: .25 (20 minutes).

Burden Hours: 66,084.

Needs and Uses: The High-Frequency Surveys Program was established as a natural progression from the creation of the Household Pulse Survey. The Census Bureau developed the Household Pulse Survey to produce near real-time data in a time of urgent and acute need to inform federal and state action in response to the Covid–19 pandemic. Changes in the measures over time provided insight into individuals' experiences on social and economic dimensions during the period of the pandemic. It has evolved to include content on other emergent social and economic issues facing households and is designed to supplement the federal statistical system's traditional benchmark data products with a new data source that provides relevant and timely information based on a high-quality sample frame, data integration, and cooperative expertise.

Affected Public: Households.

Frequency: Households will be selected once to participate in a 20-minute survey.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, sections 8(b), 182 and 193.

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 the title of the collection.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–23896 Filed 10–27–23; 8:45 am]

BILLING CODE 3510–07–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; Annual Integrated Economic Survey

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on November 21, 2022, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau, Department of Commerce.

Title: Annual Integrated Economic Survey (AIES).

OMB Control Number: 0607–1024.

Form Number(s): This electronic collection has no form number.

Type of Request: Regular submission, Revision of a currently approved collection.

Number of Respondents: Dress Rehearsal—8,470 and 50 debriefing interviews; Full AIES—384,940.

Average Hours per Response: Dress Rehearsal—3 hours and 55 minutes, Debriefing interviews—1 hour; Full AIES—3 hours and 23 minutes.

Burden Hours: Dress Rehearsal—33,206 hours, Debriefing interviews—50 hours; Full AIES—1,300,535 hours.

Needs and Uses: On June 21, 2023, The Office of Management and Budget granted approval of a Dress Rehearsal for the AIES, with the stipulation that the Census Bureau will submit a revision request documenting any changes to the forms or procedures prior to implementing a full scale AIES. This revision request documents the modifications that transpired between the U.S. Census Bureau obtaining that OMB clearance and the present moment.

The U.S. Census Bureau requests Office of Management and Budget (OMB) approval to conduct the Annual Integrated Economic Survey (AIES) on an annual basis, beginning for survey year 2023 (collected in calendar year 2024) and a preparatory Dress Rehearsal for the AIES for survey year 2022 (collected in calendar year 2023). The AIES is a new survey designed to integrate and replace seven existing annual business surveys into one survey. The AIES will provide the only comprehensive national and subnational data on business revenues, expenses, and assets on an annual basis. The AIES is designed to combine Cenlong-termu collections to reduce respondent burden, increase data quality, and allow the Census Bureau to operate more efficiently to reduce long term costs. The existing collections integrated into the AIES are the Annual Retail Trade Survey (ARTS), Annual Wholesale Trade Survey (AWTS), Service Annual Survey (SAS), Annual Survey of Manufactures (ASM), Annual Capital Expenditures Survey (ACES), Manufacturers' Unfilled Orders Survey (M3UFO), and the Report of Organization.

The AIES will collect the following information from employer businesses in sample:

- Business characteristics, including employment, operating status, organizational change, ownership information, and co-op status.
- Business classification, including business activity, type of operation, and tax status.
- Revenue, including sales, shipments, and receipts, revenue by class of customer, taxes, contributions, gifts, and grants, products, and e-commerce activity.
- Operating expenses, including purchased services, payroll, benefits, rental payments, utilities, interest, resales, equipment, materials and supplies, research and development, and other detailed operating expenses.
- Assets, including capital expenditures, inventories, and depreciable assets.
- Robotic equipment expenditures and usage.

Additional topics of collections in the AIES include sources of revenue and/or expense for providers (*e.g.,* hospitals and other businesses in the health industry) of select services such as inpatient days, outpatient visits to hospitals, patient visits for other selected health industries, revenue from telemedicine services, and expenses for electronic health records. Product data will be collected from businesses operating in manufacturing industries. Merchandise lines data will be collected from businesses operating in select retail industries. Detailed inventories will be collected for select businesses operating in transportation services industries (*e.g.,* trucks, truck tractors, and trailers).

The AIES may include new questions each year based on relevant business topics. Potential topics for such new questions could include technological advances, management and business practices, export practices, and globalization. Any new questions will be submitted to OMB for review using the appropriate clearance vehicle.

In September of 2023, the Census Bureau began conducting a Dress Rehearsal for the AIES with approximately 8,470 companies. The Dress Rehearsal will collect survey year 2022 information. The Dress Rehearsal will be a large-scale test of the forms and procedures planned for the AIES. The burden estimate is 3 hours and 55 minutes per respondent. The Dress rehearsal will allow us to examine patterns of non-response and to determine what additional support respondents will need. Paradata gathered from respondents' interactions with the online collection instrument during the Dress Rehearsal will help refine our burden estimate. We will also compare the quality of responses received to historical data collected in the 7 surveys the AIES will replace. Up to 50, 1-hour debriefing interviews with respondents will also be conducted.

To minimize the burden imposed on most respondents already in sample for the seven annual surveys the AIES will replace, we will use the AIES responses from companies that participate in the Dress Rehearsal to satisfy their reporting requirement for the annual survey(s) for

which they are in sample for the 2022 survey year. Given that the AIES Dress Rehearsal will be conducted during the same calendar year as we will be conducting the 2022 Economic Census, we may use the AIES Dress Rehearsal to supplement Economic Census responses, pursuant to Title 13 U.S.C., Section 193.

After conclusion of the Dress Rehearsal, and based on refinements made to forms and procedures, the Census Bureau will begin conducting the full-scale AIES in 2024, collecting survey year 2023 information. The target population of the AIES includes all domestic, private sector, non-farm employer businesses in the United States (50 states and the District of Columbia) as defined by the 2017 North American Industry Classification System (NAICS). Exclusions are foreign operations of U.S. businesses headquartered in the U.S. territories and most government operations (including the U.S. Postal Service), agricultural production companies and private households. Based on this target population, the AIES will select a stratified sequential random sample of approximately 384,940 companies from a frame of approximately 5.4 million companies constructed from the BR, which is the Census Bureau's master business list. Businesses which reported business activity on Internal Revenue Service (IRS) tax forms 941, ''Employer's Quarterly Federal Tax Return''; 944, ''Employer's Annual Federal Tax Return''; 1065 ''U.S. Return of Partnership Income''; or any one of the 1120 corporate tax forms will be eligible for selection.

The AIES will collect company, industry, and establishment information for all sampled enterprises with one or more operating locations in the United States and the District of Columbia (DC).

In an effort to provide a holistic company view and replace the functions of the Report of Organization Survey with the AIES to maintain and update the BR as a master list of businesses, the AIES will also collect limited company, industry, and establishment information for select enterprises with one or more operating locations in associated offshore areas (referred to, collectively, as ''Stateside'') as well as in the U.S. territories of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and American Samoa (referred to, collectively, as ''Island Areas''). In addition, any international locations of select enterprises are included if they have U.S. employees.

The public administration sector (NAICS 92), agriculture production activities (NAICS 111, 112), the postal service (NAICS 491), funds and trusts (NAICS 525), offices of notaries (NAICS 54112), and private households (NAICS 814) are considered to be out-of-scope to the AIES program. Activities for establishments in these industries belonging to sampled enterprises will also be collected. Enterprises that are exclusively engaged in these industries will not be selected.

Non-employer businesses are also not within the scope of this new AIES. The Census Bureau will submit a separate request for approval to collect data from non-employer businesses, if it is determined that a collection is needed to produce those estimates.

Respondents will receive an email and/or letter notifying them of their requirement to respond and how to access the survey. Responses will be due approximately 30 days from receipt. Select businesses will receive a due date reminder via a letter or email prior to the due date. Additionally, email follow-ups and up to three mail follow-ups to nonrespondents will be conducted at approximately one-month intervals. Selected nonrespondents will receive a priority class mailing for the third follow-up if needed. Selected nonrespondents will also receive follow-up telephone calls.

The AIES will replace the ARTS, AWTS, SAS, ASM, ACES, M3UFO, and the Report of Organization for survey year 2023, at which time the Census Bureau will officially sunset these programs. The ASM and the Report of Organization completed their final year of data collection in survey year 2021. ACES, ARTS, AWTS, SAS, and M3UFO will complete their final year of data collection in survey year 2022.

Estimates currently published in ARTS, AWTS, SAS, ASM, and ACES will be produced as part of the AIES and expanded to include subnational data across the economy. Previously, the ASM (manufacturing) was the only annual survey being integrated into the AIES that produced subnational data. The AIES will produce subnational data for manufacturing, retail, wholesale, and service sectors if quality standards are met. The AIES information previously collected on the Report of Organization will continue to be used to update the Census Bureau's BR, and the AIES data previously collected on the M3UFO will continue to be used for the Manufacturers' Shipments, Inventories, and Orders (M3) Survey benchmarking purposes. Data users will be able to access the AIES estimates through the use of visualizations, CSV files, *data.census.gov,* and the Federal Reserve Economic Data (FRED), which is an online database maintained by the Federal Reserve Bank of St. Louis.

Private businesses, organizations, industry analysts, educators and students, and economic researchers have used the data and estimates provided by the ARTS, AWTS, SAS, ASM, and ACES collections for analyzing and conducting impact evaluations on past and current economic performance, short-term economic forecasts, productivity, long-term economic growth, market analysis, tax policy, capacity utilization, business fixed capital stocks and capital formation, domestic and international competitiveness trade policy, product development, market research, and financial analysis. Trade and professional organizations have used the estimates to analyze industry trends and benchmark their own statistical programs, develop forecasts, and evaluate regulatory requirements. Government program officials and agencies have used the data for research, economic policy making, and forecasting.

Based on the use of the data of the existing collections, estimates produced from the AIES will serve as a benchmark for Census Bureau indicator programs, such as the Advance Monthly Sales for Retail and Food Services (MARTS), the Monthly Retail Trade Survey (MRTS), Manufacturers' Shipments Inventories & Orders (M3), Monthly Wholesale Trade Survey (MWTS), and the Quarterly Services Survey (QSS). Like the previous collections, the AIES will provide updates to the Longitudinal Research Database (LRD), and Census Bureau staff and academic researchers with special sworn status will continue to use the LRD for micro data analysis. The Census Bureau will also continue to use information collected in the AIES to update and maintain the centralized, multipurpose BR that provides sampling populations and enumeration lists for the Census Bureau's economic surveys and censuses.

The Bureau of Economic Analysis (BEA) will continue to use the estimates to derive industry output for the input-output accounts and for the gross domestic product (GDP). The Bureau of Labor Statistics (BLS) will continue to use the data as input to its Producer Price Index (PPI) and in developing productivity measurements; the Federal Reserve Board (FRB) will continue to use the data to prepare the Index of Industrial Production, to improve estimates of investment indicators for monetary policy, and in monitoring retail credit lending; the Centers for Medicare and Medicaid Services (CMS) will continue to use the data to estimate

expenditures for the National Health Accounts and for monitoring and evaluating healthcare industries; and the Department of the Treasury will continue to use the data to analyze depreciation and to research economic trends.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: The AIES collection is authorized by title 13 U.S.C. 131, 182, and 193. Response to the AIES is mandatory per sections 224 and 225 of title 13, U.S.C.

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 the title of the collection.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–23908 Filed 10–27–23; 8:45 am]

BILLING CODE 3510–07–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; Survey of Income and Program Participation

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on July 20, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau, Department of Commerce.

Title: Survey of Income and Program Participation.

OMB Control Number: 0607–1000.

Form Number(s): None.

Type of Request: Regular submission, Revision of a Currently Approved Collection.

Number of Respondents: 40,000.

Average Hours per Response: 50 minutes.

Burden Hours: 33,330.

Needs and Uses: The SIPP collects information about a variety of topics including demographics, household composition, education, nativity and citizenship, health insurance coverage, Medicaid, Medicare, employment and earnings, unemployment insurance, assets, child support, disability, housing subsidies, migration, Old-Age Survivors and Disability Insurance (OASDI), poverty, and participation in various government programs like Supplemental Nutrition Assistance Program (SNAP), Supplemental Security Income (SSI), and Temporary Assistance for Needy Families (TANF).

The SIPP sample is nationally representative, with an oversample of low-income areas, in order to increase the ability to measure participation in government programs.

The SIPP program provides critical information necessary to understand patterns and relationships in income and program participation. It will fulfill its objectives to keep respondent burden and costs low, maintain high data quality and timeliness, and use a refined and vetted instrument and processing system. The SIPP data collection instrument maintains the improved data collection experience for respondents and interviewers and focuses on improvements in data quality and better topic integration.

The SIPP instrument is currently written in Blaise and C#. It incorporates an Event History Calendar (EHC) design to help ensure that the SIPP will collect intra-year dynamics of income, program participation, and other activities with at least the same data quality as earlier panels. The EHC is intended to help respondents recall information in a more natural ''autobiographical'' manner by using life events as triggers to recall other economic events. For example, a residence change may often occur contemporaneously with a change in employment. The entire process of compiling the calendar focuses, by its nature, on consistency and sequential order of events, and attempts to correct for otherwise missing data.

Since the SIPP EHC collects information using this ''autobiographical'' manner for the prior year, due to the coronavirus pandemic, select questions were modified to include answer options related to the pandemic as well as adding new questions pertaining to the pandemic. For instance, we adjusted the question regarding being away from work part-time to include being possibly furloughed due to coronavirus pandemic business closures. We also added new questions to collect information on whether the respondent received any stimulus payments.

Affected Public: Individual or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Sections 141, 182.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0607–1000.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–23905 Filed 10–27–23; 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; Services Surveys: BE–140, Benchmark Survey of Insurance Transactions by U.S. Insurance Companies With Foreign Persons (Extended Public Comment Period)

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 (PRA) 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 October 12, 2023, during a 30-day comment period. This notice allows for an additional 12 days for public comments.

Agency: Bureau of Economic Analysis, Department of Commerce.

OMB Control Number: 0608–0073.

Form Number(s): BE–140.

Type of Request: Regular submission.

Estimated Number of Respondents: 1,300 annually (1,000 reporting mandatory data and 300 that would file exemption claims or voluntary responses).

Estimated Time per Response: 9 hours is the average for the 600 respondents filing data by country and affiliation, 2 hours for the 400 respondents filing data by transaction type only, and 1 hour for those filing an exemption claim or other response. Hours may vary considerably among respondents because of differences in company size and complexity.

Estimated Total Annual Burden Hours: 6,500.

Needs and Uses: The data are needed to monitor U.S. trade in insurance services, to analyze the impact of these cross-border services on the U.S. and foreign economies, to compile and improve the U.S. economic accounts, to support U.S. commercial policy on trade in services, to conduct trade promotion, and to improve the ability of U.S. businesses to identify and evaluate market opportunities. The data are used in estimating the trade in insurance services component of the U.S. international transactions accounts (ITAs) and national income and product accounts (NIPAs).

Affected Public: Business or other for-profit organizations.

Frequency: Every fifth year, for reporting years ending in ''3'' and ''8''.

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 0608–0073.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–23848 Filed 10–27–23; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2149]

Reorganization and Expansion of Foreign-Trade Zone 255 Under Alternative Site Framework; Washington County, Maryland

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the Board of County Commissioners of Washington County, grantee of Foreign-Trade Zone 255, submitted an application to the Board (FTZ Docket B–27–2023, docketed April 13, 2023) for authority to reorganize and expand under the ASF with a service area of Washington County, Maryland, adjacent to the Baltimore Customs and Border Protection port of entry, FTZ 255's existing Sites 1, 2, 4, 6 and 7 would be categorized as magnet sites, and the grantee proposes one initial subzone (Subzone 255A);

Whereas, notice inviting public comment was given in the **Federal Register** (88 FR 24161–24162, April 19, 2023) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiners' report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to reorganize and expand FTZ 255 under the ASF is approved, subject to the FTZ Act and the Board's regulations, including section 400.13, to the Board's standard 2,000-acre activation limit for the zone, to an ASF sunset provision for magnet sites that would terminate authority for Sites 1, 4, 6 and 7 if not activated within five years from the month of approval, and to an ASF sunset provision for subzones that would terminate authority for Subzone 255A if no foreign-status merchandise is admitted for a *bona fide* customs purpose within three years from the month of approval.

Dated: October 24, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2023–23851 Filed 10–27–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–028]

Hydrofluorocarbon Blends From the People's Republic of China: Initiation of Circumvention Inquiry on the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from the American HFC Coalition, a domestic interested party, the U.S. Department of Commerce (Commerce) is initiating a country-wide circumvention inquiry to determine whether U.S. imports from Mexico of R–410B, which are completed in Mexico using Chinese components and further processed in the United States, are circumventing the antidumping duty (AD) order on hydrofluorocarbon (HFC) blends from the People's Republic of China (China).

DATES: Applicable October 30, 2023.

FOR FURTHER INFORMATION CONTACT: Genevieve Coen or Jerry Xiao, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3251 or (202) 482–2273, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 22, 2023, pursuant to sections 781(a) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.226(c), the American HFC Coalition [1] filed a circumvention inquiry request alleging that HFC blends completed in Mexico from Chinese components and further processed in the United States are circumventing the AD order on HFC blends from Mexico [2] and, accordingly, should be included within the scope of the *Order.*[3] On October 17, 2023, the American HFC Coalition responded to our supplemental questionnaire.[4]

Scope of the Order

The products subject to the *Order* are HFC blends. HFC blends covered by the scope of the *Order* are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 3827.61.0000, 3827.63.0000, 3827.64.0000, 3827.65.0000, 3827.68.0000, 3827.69.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive. For a full description of the scope the *Order, see* the attachment to the Initiation Checklist.[5]

Merchandise Subject to the Circumvention Inquiry

The circumvention inquiry covers R–410B from Mexico that is completed in Mexico using Chinese R–32 and R–125 and then subsequently exported to and further processed in the United States into an in-scope blend (*i.e.,* R–410A).

Initiation of Circumvention Inquiry

Section 351.226(d) of Commerce's regulations states that if Commerce determines that a request for a circumvention inquiry satisfies the requirements of 19 CFR 351.226(c), then Commerce ''will accept the request and initiate a circumvention inquiry.'' Section 351.226(c)(1) of Commerce's regulations, in turn, requires that each circumvention inquiry request allege ''that the elements necessary for a circumvention determination under section 781 of the Act exist'' and be ''accompanied by information reasonably available to the interested party supporting these allegations.'' The American HFC Coalition alleged circumvention pursuant to section 781(a) of the Act (merchandise completed or assembled in the United States).

Section 781(a)(1) of the Act provides that Commerce may find circumvention of an order when merchandise of the same class or kind subject to the order is completed or assembled in the United States. In conducting a circumvention inquiry, under section 781(a)(1) of the Act, Commerce relies on the following criteria: (A) merchandise sold in the United States is of the same class or kind as any merchandise that is the subject of an AD or countervailing duty (CVD) order; (B) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order or finding applies; (C) the process of assembly or completion in the United States is minor or insignificant; and (D) the value of the parts or components referred to in subparagraph (B) is a significant portion of the total value of the merchandise.

In determining whether the process of assembly or completion in the United States is minor or insignificant under section 781(a)(1)(C) of the Act, section 781(a)(2) of the Act directs Commerce to consider: (A) the level of investment in the United States; (B) the level of research and development in the United States; (C) the nature of the production process in the United States; (D) the extent of production facilities in the United States; and (E) whether the value of the processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States. However, no single factor, by itself, controls Commerce's determination of whether the process of assembly or completion in the United States is minor or insignificant.[6] Accordingly, it is Commerce's practice to evaluate each of these five factors as they exist in the United States, and to reach an affirmative or negative circumvention determination based on the totality of the circumstances of the particular circumvention inquiry.[7]

In addition, section 781(a)(3) of the Act sets forth additional factors to consider in determining whether to include merchandise assembled or completed in the United States within the scope of an AD or CVD order. Specifically, Commerce shall take into account such factors as: (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the parts or components is affiliated with the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order applies; and (C) whether imports into the United States of the parts or components products in such foreign country have increased after the initiation of the investigation which resulted in the issuance of such order.

Analysis

Based on our analysis of the American HFC Coalition's circumvention request, Commerce determines that the American HFC Coalition has satisfied the criteria under 19 CFR 351.226(c) to warrant the initiation of a circumvention inquiry of the *Order.* For a full discussion of the basis for our decision to initiate this circumvention inquiry, *see* the Initiation Checklist. As explained in the Initiation Checklist, the information provided by domestic interested parties warrants initiating this circumvention inquiry on a country-wide basis. Commerce has taken this approach in prior circumvention inquiries, where the facts warranted initiation on a country-wide basis.[8]

[1] The American HFC Coalition consists of individual members, including Arkema, Inc., The Chemours Company FC LLC, Honeywell International Inc., and Mexichem Fluor Inc. (collectively, domestic interested parties).

[2] *See Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Antidumping Duty Order,* 81 FR 55436 (August 19, 2016) (*Order*).

[3] *See* American HFC Coalition's Letter, ''Request to Initiate Anti-Circumvention Inquiry with Respect to Imports of R–410B from Mexico Pursuant to Section 781(a) of the Act,'' dated September 22, 2023.

[4] *See* American HFC Coalition's Letter, ''HFC Coalition's Response to Circumvention Supplemental Questionnaire—R–410B from Mexico,'' dated October 17, 2023.

[5] *See* Initiation Checklist, ''Circumvention Initiation Checklist: Hydrofluorocarbon Blends from the People's Republic of China,'' dated concurrently with this notice (Initiation Checklist).

[6] *See* Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, Vol. 1 (1994), at 893.

[7] *See Hydrofluorocarbon Blends from the People's Republic of China: Final Negative Scope Ruling on Gujarat Fluorochemicals Ltd.'s R–410A Blend; Affirmative Final Determination of Circumvention of the Antidumping Duty Order by Indian Blends Containing CCC Components,* 85 FR 61930 (October 1, 2020), and accompanying Issues and Decision Memorandum at 20 (specifying the same in the context of a section 781(b) inquiry).

[8] *See, e.g., Hydrofluorocarbon Blends from the People's Republic of China: Initiation of Circumvention Inquiries on the Antidumping Duty Order,* 88 FR 43275 (July 7, 2023); *see also Certain Corrosion-Resistant Steel Products from the Republic of Korea and Taiwan: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders,* 83 FR 37785 (August 2, 2018); *Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Initiation of Anti-Circumvention Inquiry on the Antidumping Duty Order,* 82 FR 40556, 40560 (August 25, 2017) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted); and *Certain Corrosion-Resistant Steel Products from the People's Republic*

Continued

Consistent with the approach in the prior circumvention inquiries that were initiated on a country-wide basis, Commerce intends to issue questionnaires to solicit information from producers and exporters in Mexico, concerning their shipments to the United States and the origin of any imported HFC blends being further processed into HFC blends subject to the *Order.*

Respondent Selection

Commerce intends to base respondent selection on U.S. Customs and Border and Protection (CBP) data. Commerce intends to place CBP data on the record within five days of the publication of the initiation notice. Comments regarding the CBP data and respondent selection should be submitted within seven days after placement of the CBP data on the record of this inquiry.

Commerce intends to establish a schedule for questionnaire responses after respondent selection. A company's failure to completely respond to Commerce's requests for information may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.

Suspension of Liquidation

Pursuant to 19 CFR 351.226(l)(1), Commerce will notify CBP of the initiation of this circumvention inquiry and direct CBP to continue the suspension of liquidation of entries of products subject to the circumvention inquiry that were already subject to the suspension of liquidation under the *Order* and to apply the cash deposit rate that would be applicable if the product was determined to be covered by the scope of the *Order.* Should Commerce issue a preliminary or final circumvention determination, Commerce will follow the suspension of liquidation rules under 19 CFR 351.226(l)(2)–(4).

Notification to Interested Parties

In accordance with 19 CFR 351.226(d) and section 781(a) of the Act, Commerce determines that the American HFC Coalition's request for this circumvention inquiry satisfies the requirements of 19 CFR 351.226(c). Accordingly, Commerce is notifying all interested parties of the initiation of this circumvention inquiry to determine whether U.S. imports from Mexico of R–410B that are completed in Mexico using Chinese components and then blended into in-scope R–410A in the United States are circumventing the *Order.* In addition, we included a description of the product that is the subject of this inquiry and an explanation of the reasons for Commerce's decision to initiate this inquiry as provided above and in the accompanying Initiation Checklist. In accordance with 19 CFR 351.226(e)(1), Commerce intends to issue its preliminary determination no later than 150 days from the date of publication of the notice of initiation of this circumvention inquiry in the **Federal Register**.

This notice is published in accordance with section 781(a) of the Act and 19 CFR 351.226(d)(1)(ii).

Dated: October 23, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–23850 Filed 10–27–23; 8:45 am]

BILLING CODE 3510–DS–P

of China: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders, 81 FR 79454, 79458 (November 14, 2016) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–833]

Raw Honey From the Socialist Republic of Vietnam: Initiation of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is initiating a changed circumstances review (CCR) of the antidumping duty (AD) order on raw honey from the Socialist Republic of Vietnam (Vietnam) to examine whether Vietnam remains a non-market economy (NME) country for purposes of the application of the AD law.

DATES: Applicable October 30, 2023.

FOR FURTHER INFORMATION CONTACT: Chien-Min Yang or Leah Wils-Owens, Office of Policy, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5484 or (202) 482–4203, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 8, 2023, the Government of Vietnam (GOV) submitted a letter requesting that Commerce conduct a review of Vietnam's status as an NME country [1] within the context of a CCR of the AD order on raw honey from Vietnam.[2] In the CCR Request, the GOV describes changes that have occurred in Vietnam in recent years as they relate to each of the statutory criteria Commerce uses to evaluate a country's market economy status. Specifically, in the CCR Request, the GOV contends that the Vietnamese dong is transparently convertible into other foreign currencies based on market principles, fairness, and non-discrimination.[3] In the CCR Request, the GOV argues that bargaining between labor and management on wage rates in Vietnam is free, and that Vietnam now possesses a clear legal framework to ensure employees' basic rights.[4] With regard to foreign direct investment, the GOV states in the CCR Request that Vietnam has made improvements in the investment environment, stating that no differences exist in how foreign and domestic investors are treated.[5] In the CCR Request, the GOV also provides information on the reduction of government ownership and control over the means of production in Vietnam and maintains that private sector development, state-owned enterprise restructuring and divestment, and land reform initiatives have all been taken.[6] As to the allocation of resources and the government's role in price and output decisions, the GOV states in the CCR Request that the GOV does not possess significant control over these areas.[7] In the CCR Request, the GOV also identifies other factors that have been important to market-oriented reforms, including the establishment of a legal framework for bankruptcy, greater transparency in corporate governance, the launch of a legal framework for a state audit, a unified legal system, and diversified foreign economic relations.[8]

On October 6, 2023, the American Honey Producers Association and Sioux Honey Association (the petitioners) submitted comments in opposition to CCR Request.[9] On October 17, 2023, the GOV submitted rebuttal comments in

[1] *See* GOV's Letter, ''Request for Changed Circumstances Review,'' dated September 8, 2023 (CCR Request).

[2] *See Raw Honey from Argentina, Brazil, India, and the Socialist Republic of Vietnam: Antidumping Duty Orders,* 87 FR 35501 (June 10, 2023).

[3] *See* CCR Request at 3.

[4] *Id.* at 7–8.

[5] *Id.* at 10–14.

[6] *Id.* at 14–16.

[7] *Id.* at 16–20.

[8] *Id.* at 20–23.

[9] *See* Petitioners' Letter, ''Petitioners' Response to Vietnam's Request for Market Economy Treatment,'' dated October 6, 2023 (Petitioners' Comments).

response to the Petitioners' Comments.[10] On October 19, 2023, Commerce received comments from the following parties: the Southern Shrimp Alliance; [11] the Metal Grating Coalition; [12] Catfish Farmers of America (CFA) and America's Catch, Inc., Alabama Catfish, LLC d/b/a Harvest Select Catfish, Inc., Consolidated Catfish Companies, LLC d/b/a Country Select Catfish, Delta Pride Catfish, Inc., Guidry's Catfish, Inc., Heartland Catfish Company, Magnolia Processing, Inc. d/b/a Pride of the Pond, and Simmons Farm Raised Catfish, Inc.; [13] the Coalition for Fair Trade in Hardwood Plywood; [14] and Wiley Rein, LLP.[15] On October 20, 2023, the following parties submitted comments in opposition to GOV's CCR Request: Steel Dynamics, Inc. (SDI), the American Shrimp Processors Association (ASPA), and the American Kitchen Cabinet Alliance (AKCA); [16] the Steel Manufacturers Association; [17] and the Coalition of American Millwork Producers.[18]

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), when Commerce receives information concerning, or a request from an interested party for a review of, a final affirmative determination that resulted in an AD or countervailing duty order, which shows changed circumstances sufficient to warrant a review of such determination, Commerce shall conduct a review of the determination after publishing notice of the review in the **Federal Register**. Section 751(b)(4) of the Act provides that, in the absence of good cause, Commerce may not review final determinations regarding whether subject merchandise is being, or is likely to be, sold in the United States at less than its fair value, or whether or not a countervailable subsidy is being provided with respect to subject merchandise, less than 24 months after the date of publication of the notice of that determination.

As the GOV submitted substantial information on the reforms to the Vietnamese economy that are relevant to the six statutory factors Commerce reviews as part of its analysis on market economy status, and that have occurred since Commerce last reviewed Vietnam's market economy status in 2002,[19] Commerce determines that good cause exists to review Vietnam's status as an NME country at this time within the meaning of 19 CFR 351.216(c). Section 771(18)(C)(ii) of the Act, which states that Commerce may make determinations of a country's NME status at any time, further grants Commerce the authority to initiate this NME review. Therefore, in response to this request, Commerce is initiating a CCR to examine whether Vietnam remains an NME country for purposes of the AD law, in accordance with sections 751(b) and 771(18)(C)(ii) of the Act.

Opportunity for Public Comment and Submission of Factual Information

As part of this inquiry in which we are reviewing Vietnam's NME country status, Commerce invites public comments with respect to Vietnam on the following factors enumerated by section 771(18)(B) of the Act, which Commerce must consider in making an ME/NME determination:

(i) the extent to which the currency of the foreign country is convertible into the currency of other countries;

(ii) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management;

(iii) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country;

(iv) the extent of government ownership or control of the means of production;

(v) the extent of government control over the allocation of resources and over the price and output decisions of enterprises; and

(vi) such other factors as the administering authority considers appropriate.

The deadline for the submission of comments is not later than 30 days after the date of publication of this notice. Rebuttal comments, limited to issues raised in parties' affirmative comments, may be filed not later than 14 days after the date for filing affirmative comments. Interested parties must submit comments and factual information at the Federal eRulemaking Portal: *https://www.Regulations.gov.* The identification number is ITA–2023–0010. An electronically filed document must be received successfully in its entirety by 5:00 p.m. Eastern Time on the due date set forth in this notice. Parties may request a hearing in their comments. If Commerce determines that a hearing is warranted, parties will be notified of the date, time, and room number for the hearing, in accordance with 19 CFR 351.310(d).

Unless extended, consistent with 19 CFR 351.216(e), we will issue the final results of this CCR no later than 270 days after the date on which this review was initiated.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(b) and 771(18)(C)(ii) of the Act.

Dated: October 23, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–23849 Filed 10–27–23; 8:45 am]

BILLING CODE 3510–DS–P

[10] *See* GOV's Letter, ''Responses to Petitioners' Comments on Viet Nam's Request for Market Economy Treatment,'' dated October 17, 2023.

[11] *See* Southern Shrimp Alliance's Letter, ''Comments in Response to Request for Market Economy Status,'' dated October 19, 2023.

[12] *See* Metal Grating Coalition's Letter, ''Response to the Government of the Socialist Republic of Vietnam's Request for Changed Circumstances Review,'' dated October 19, 2023.

[13] *See* CFA *et al.'s* Letter, ''Response to the Government of the Socialist Republic of Vietnam's Request for Changed Circumstances Review,'' dated October 19, 2023.

[14] *See* Coalition for Fair Trade in Hardwood Plywood's Letter, ''Response to the Government of the Socialist Republic of Vietnam's Request for Changed Circumstances Review,'' dated October 19, 2023.

[15] *See* Wiley Rein, LLP's Letter, ''Response to the Government of the Socialist Republic of Vietnam's Request for Changed Circumstances Review,'' dated October 19, 2023.

[16] *See* SDI, ASPA, and AKCA's Letter, ''Response to Request for Changed Circumstances Review of the Antidumping Order on Raw Honey from the Socialist Republic of Vietnam,'' dated October 20, 2023.

[17] *See* Steel Manufacturer Association's Letter, ''Response to the Government of the Socialist Republic of Vietnam's Requests for Changed Circumstances Review,'' dated October 20, 2023.

[18] *See* Coalition of American Millwork Producers' Letter, ''Response to the Government of the Socialist Republic of Vietnam's Request for Changed Circumstances Review,'' dated October 20, 2023.

[19] *See Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 37116 (June 23, 2003).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–900]

Granular Polytetrafluoroethylene Resin From India: Notice of Court Decision Not in Harmony With the Final Determination of Countervailing Duty Investigation; Notice of Amended Final Determination and Amended Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On October 13, 2023, the U.S. Court of International Trade (CIT) issued its final judgment in *Gujarat Fluorochemicals Limited* v. *United States,* Court No. 22–00120, sustaining

the U.S. Department of Commerce's (Commerce) remand redetermination pertaining to the countervailing duty (CVD) investigation of granular polytetrafluoroethylene (PTFE) resin from India covering the period of investigation April 1, 2019, through March 31, 2020. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final determination in that investigation, and that Commerce is amending the final determination and the resulting CVD order with respect to the countervailable subsidy rate assigned to Gujarat Fluorochemicals Limited (GFL).

DATES: Applicable October 23, 2023.

FOR FURTHER INFORMATION CONTACT: Robert Palmer, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–9068.

SUPPLEMENTARY INFORMATION:

Background

On January 25, 2022, Commerce published its final determination in the CVD investigation of granular PTFE resin from India. Commerce calculated a countervailable subsidy rate of 31.89 percent for GFL and for all other producers/exporters of granular PTFE resin in India.[1] Commerce subsequently published the CVD order on granular PTFE resin from India.[2]

GFL appealed Commerce's *Final Determination.* On January 24, 2023, the CIT remanded the *Final Determination* to Commerce, directing Commerce to: (1) delete from the overall rate the 26.50 percent estimated subsidy rate for the provision of land by the State Industrial Development Corporation (SIDC) in the state of Madhya Pradesh, and (2) reconsider its inclusion of an estimated 0.12 percent subsidy rate for the provision of land by the Gujarat Industrial Development Corporation (GIDC).[3]

In its final remand redetermination, issued in February 2023, Commerce removed the 26.50 percent estimated subsidy rate for the SIDC's provision of land from GFL's overall subsidy rate, under respectful protest; reconsidered the inclusion of the subsidy rate for the GIDC's provision of land; determined that this provision of land constitutes a financial contribution from an authority and is specific, making no changes to the 0.12 percent estimated subsidy rate for the GIDC's provision of land; and revised the all-others rate, which was based on GFL's rate.[4] The CIT sustained Commerce's *Final Redetermination.*[5]

Timken Notice

In its decision in *Timken,*[6] as clarified by *Diamond Sawblades,*[7] the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's October 13, 2023, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Determination.* Thus, this notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Determination

Because there is now a final court judgment, Commerce is amending its *Final Determination* with respect to GFL and the all-others rate as follows:

Company	Subsidy rate *ad valorem* (percent)
Gujarat Fluorochemicals Limited[8]	5.39
All Others	5.39

Amended Countervailing Duty Order

Because there is now a final court decision, Commerce is amending its *Final Determination* and *Order.* As a result of this amended final determination, Commerce is hereby updating GFL's *ad valorem* subsidy rate to 5.39 percent. Additionally, because the all-others rate was based on GFL's rate, Commerce is also updating the all-others rate to 5.39 percent.

Cash Deposit Requirements

Commerce will issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). Additionally, Commerce will instruct CBP to refund the difference between the amount of cash deposits paid as a result of the application of the *Final Determination* and the amount due as a result of the application of this amended CVD order.

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that: were produced and/or exported by GFL and were entered, or withdrawn from warehouse, during the period July 6, 2021, through December 31, 2022, excluding any merchandise entered, or withdrawn from warehouse, for consumption, on November 3, 2021, through March 11, 2022. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: October 25, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–23992 Filed 10–26–23; 4:15 pm]

BILLING CODE 3510–DS–P

[1] *See Granular Polytetrafluoroethylene Resin from India: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination,* 87 FR 3765 (January 25, 2022) (*Final Determination*).

[2] *See Granular Polytetrafluoroethylene Resin from India and the Russian Federation: Countervailing Duty Orders,* 87 FR 14509 (March 15, 2022) (*Order*).

[3] *See Gujarat Fluorochemicals Limited* v. *United States,* Court No. 22–00120, Slip Op. 23–9 (CIT January 24, 2023).

[4] *See Final Results of Redetermination Pursuant to Court Remand, Gujarat Fluorochemicals Limited* v. *United States,* Court No. 22–00120, Slip Op. 23–9 (CIT February 23, 2023) (*Final Redetermination*), available at *https://access.trade.gov/resources/remands/index.html.*

[5] *See Gujarat Fluorochemicals Limited* v. *United States,* Court No. 22–00120, Slip Op. 23–151 (CIT October 13, 2023).

[6] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[7] *See Diamond Sawblades Manufacturers Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[8] Commerce has found the following companies to be cross-owned with GFCL: Inox Leasing Finance Limited and Inox Wind Limited.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD489]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat Joint Advisory Panel and Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). This meeting will be held in-person with a webinar option. Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This hybrid meeting be held on Tuesday, November 14, 2023, at 9 a.m.

ADDRESSES:

Meeting address: This meeting will be held at the Four Points by Sheraton, One Audubon Road, Wakefield, MA 01880; telephone: (781) 245–9300.

Webinar registration URL information: https://attendee.gotowebinar.com/register/5291714603459595103.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Cate O'Keefe, Ph.D., Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Advisory Panel and Committee plan to discuss progress towards developing alternatives and analyses for the Northern Edge Habitat-Scallop Framework and provide guidance to the Plan Development Team. They will briefly discuss findings of the joint Mid-Atlantic Fishery Management Council-New England Fishery Management Council Scientific and Statistical Committee (MAFMC–NEFMC SSC) subpanel essential fish habitat (EFH) methods review and consider next steps for the Council's management action. They also plan to discuss current issues and comment opportunities related to offshore wind or other offshore development projects and provide guidance as appropriate. This will include reviewing and commenting on draft Wind Energy Areas and suitability modeling for the Gulf of Maine. The Panel and Committee plan to discuss and rank 2024 work priorities related to habitat and offshore development issues for Council consideration in December. Other business will be discussed, if necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cate O'Keefe, Ph.D., Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: October 25, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–23886 Filed 10–27–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD478]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The MAFMC's Spiny Dogfish Committee will meet via webinar to develop recommendations for 2024–2026 Spiny Dogfish specifications.

DATES: The meeting will be held on Friday, November 17, 2023, from 9 a.m. to 12:30 p.m.

ADDRESSES: The meeting will be held via webinar. Connection information will be posted to the MAFMC's website calendar prior to the meeting at *www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for the Spiny Dogfish Committee to develop recommendations regarding 2024–2026 Spiny Dogfish specifications, including changes to commercial quotas and/or other federal management measures to ensure annual catch limits are not exceeded.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: October 25, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–23884 Filed 10–27–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD475]

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 89 South Atlantic Tilefish Life History Topical Working Group (LH–TWG) Data Scoping Webinar.

SUMMARY: The SEDAR 89 assessment of the South Atlantic stock of tilefish will consist of a series of assessment webinars. A SEDAR 89 LH–TWG Data Scoping Webinar is scheduled for November 16, 2023. See **SUPPLEMENTARY INFORMATION.**

DATES: The SEDAR 89 South Atlantic Tilefish LH–TWG Data Scoping Webinar has been scheduled for November 16, 2023, from 1 p.m. to 4 p.m. Eastern. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Registration for the webinar is available by contacting the SEDAR coordinator via email at *Meisha.Key@safmc.net.*

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Meisha Key, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366; email: *Meisha.Key@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the SEDAR 89 South Atlantic Tilefish LH–TWG Data Scoping Webinar are as follows: Discuss available data resources, points of contact, data delivery deadlines, and any known data issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: October 25, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–23885 Filed 10–27–23; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 9:30 a.m. EDT, Wednesday, November 1, 2023.

PLACE: CFTC Headquarters Conference Center, Three Lafayette Centre, 1155 21st Street NW, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commodity Futures Trading Commission (Commission or CFTC) will hold this meeting to consider the following matter:

- *Proposed Rule:* Investment of Customer Funds by Futures Commission Merchants and Derivatives Clearing Organizations.

The agenda for this meeting will be available to the public and posted on the Commission's website at *https://www.cftc.gov.* Members of the public are free to attend the meeting in person, or have the option to listen by phone or view a live stream. Instructions for listening to the meeting by phone and connecting to the live video stream will be posted on the Commission's website.

In the event that the time, date, or place of this meeting changes, an announcement of the change, along with the new time, date, or place of the meeting, will be posted on the Commission's website.

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, Secretary of the Commission, 202–418–5964.

Authority: 5 U.S.C. 552b.

Dated: October 25, 2023.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2023–23951 Filed 10–26–23; 11:15 am]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, November 1, 2023–10:00 a.m.

PLACE: Room 420, 4330 East West Highway, Bethesda, Maryland 20814.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED: Briefing Matter: Closed meeting topic.

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, 301–504–7479 (Office) or 240–863–8938 (Cell).

Dated: October 25, 2023.

Alberta E. Mills,

Commission Secretary.

[FR Doc. 2023–23956 Filed 10–26–23; 11:15 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; AmeriCorps Application Questions

AGENCY: Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Corporation for National and Community Service, operating as AmeriCorps, has submitted a public information collection request (ICR) entitled AmeriCorps Application Questions for review and approval in accordance with the Paperwork Reduction Act.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by November 29, 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: Copies of this ICR, with applicable supporting documentation, may be obtained by calling AmeriCorps, Sharron Tendai, at 202–606–3904 or by email to *stendai@cns.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of AmeriCorps, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on July 31, 2023 at 49453–49454. This comment period ended September 29, 2023. No public comments were received from this Notice. On September 12, 2023, AmeriCorps led a focus group with 9 individuals to discuss the burden of the AmeriCorps Application Questions. The participants in the focus group were a mix of VISTA sponsors, and grantees from AmeriCorps Seniors, AmeriCorps State and National, and Volunteer Initiatives. Participants agreed that AmeriCorps requests a lot of data in its application but does not communicate its intentions for the information collected. They further agreed that AmeriCorps should more clearly communicate to those who complete this information collection why it requires the level of data collection it asks for. While the application lists a burden of 6 hours to complete the application questions, participants agreed the actual time spent completing the application is significantly longer. For this reason, we have extended the time burden to 40 hours per applicant.The application instructions are often circular, referring back to one another, and applicants have to frequently refer back to them (NOFO, guidance, application instructions). Participants told AmeriCorps that navigating these materials in order to complete this information collection is extremely burdensome and frustrating. Their additional suggestions for minimizing the burden to the public include: replacing eGrants, providing a word limit per section rather than a page limit, and providing clear checklists of ''must-do'' items and criteria to help guide applicants through the process in a more concrete way. While many of these changes are not currently possible in eGrants, these comments will help inform improvements to the forthcoming grants management system.

Title of Collection: AmeriCorps Application Questions.

OMB Control Number: 3045–0187. Type of Review: Renewal.

Respondents/Affected Public: Organizations, State, Local or Tribal Governments.

Total Estimated Number of Annual Responses: 13,200.

Total Estimated Number of Annual Burden Hours: 528,000.

Abstract: The generic application questions are used by applicants for funding through AmeriCorps competitions. The application is completed electronically using the Agency's web-based grants management system or submitted via email. AmeriCorps seeks to renew the current information collection without revisions. The information collection will otherwise be used in the same manner as the existing application. AmeriCorps also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on October 30, 2023.

Danielle Melfi,

Chief Program Officer.

[FR Doc. 2023–23808 Filed 10–27–23; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0187]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; 2024 Teaching and Learning International Survey (TALIS 2024) Main Study Revision

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before November 29, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Clarady, (202) 245–6347.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: 2024 Teaching and Learning International Survey (TALIS 2024) Main Study Revision.

OMB Control Number: 1850–0888.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 10,820.

Total Estimated Number of Annual Burden Hours: 11,347.

Abstract: The Teaching and Learning International Survey (TALIS) is an international survey of teachers and principals focusing on the working conditions of teachers and the teaching and learning practices in schools. The United States will administer TALIS for the third time in 2024, having participated in 2013 and 2018. TALIS 2024 is sponsored by the Organization for Economic Cooperation and Development (OECD). TALIS is steered

by the TALIS Governing Board (TGB), comprising representatives from the OECD member countries, and implemented internationally by organizations contracted by the OECD (referred to as the International consortium). In the U.S., TALIS 2024 is conducted by the National Center for Education Statistics (NCES) of the Institute of Education Sciences, U.S. Department of Education.

TALIS 2024 is focused on teachers; professional environment, teaching conditions, and their impact on school and teacher effectiveness. TALIS 2024 will address teacher training and professional development, teacher appraisal, school climate, school leadership, instructional approaches, pedagogical practices, and teaching experience with and support for teaching diverse populations.

OECD has scheduled the main study to occur in the Northern hemisphere from February through March 2024 and in the Southern hemisphere from June through August 2024. To prepare for the main study, several TALIS countries will conduct pilot studies in February 2022; the U.S. will not participate. Countries will also conduct a field test in the first quarter of 2023, primarily to evaluate newly developed questionnaire items and school recruitment materials; the U.S. will participate in the field test. To meet the international data collection schedule for the field test, U.S. recruitment activities need to begin by August 2022 and U.S. questionnaires must be finalized by December 2022.

TALIS 2024 includes the core TALIS teacher and principal surveys that are required for each participating country, as well as an optional Teacher Knowledge Survey (TKS). The TKS is intended to better understand the teacher pedagogical knowledge base at the national level. The U.S. is including the TKS in the upcoming TALIS 2024 field test and will evaluate these results to determine the feasibility of including TKS as part of the US Main Study.

The previous submission (OMB #1850–0888 v.8) requested approval for: (1) recruitment and pre-survey activities for the 2023 field test sample; (2) administration of the field test; and (3) school recruitment and pre-survey activities for the 2024 main study sample. That package was approved in August 2022. This submission requests approval for the final international versions of the principal and teacher instruments approved for the TALIS 2024 Field Test. The final U.S. adaptations of the 2024 core TALIS and TKS field test questionnaires that will be administered in the TALIS 2024 U.S. Field Test will be submitted to OMB as a non-substantive change request in Winter 2022/23.

Dated: October 24, 2023.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–23841 Filed 10–27–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0184]

Agency Information Collection Activities; Comment Request; Application for the Educational Flexibility (Ed-Flex) Program

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before December 29, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2023–SCC–0184. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Evan Skloot, 202–453–6515.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Application for the Educational Flexibility (Ed-Flex) Program.

OMB Control Number: 1810–0737.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal governments.

Total Estimated Number of Annual Responses: 32.

Total Estimated Number of Annual Burden Hours: 620.

Abstract: This is a request for a revision to the Educational Flexibility program application to include the annual reporting template. The Educational Flexibility (Ed-Flex) program is authorized under the Education Flexibility Partnership Act of 1999 and was reauthorized by section 9207 of the Every Student Succeeds Act (ESSA). The Ed-Flex program allows the Secretary to authorize a State educational agency (SEA) that serves an eligible State to waive statutory or regulatory requirements applicable to one or more the included programs for any local educational agency (LEAs), educational service agency, or school within the State. Section 4(a)(3) of the Education Flexibility Partnership Act of

1999 requires each SEA desiring to participate in the education flexibility program to submit an application detailing that SEAs education flexibility plan. Section 4(a)(5)(B) requires each SEA that is authorized to become an Ed-Flex Partnership State to submit an annual report on the results of its oversight and the impact of the waivers on school and student performance. Previously, the annual reporting requirement instructions and burden hours were included as part of the application. In order to standardize reporting, we have created an annual reporting template and are increasing the burden hours related to the annual reporting based on feedback from the field. However, overall, there is a decrease in burden due to a change in the estimated number of responses based on past experience with the program.

Dated: October 25, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–23871 Filed 10–27–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0188]

Agency Information Collection Activities; Comment Request; National Assessment of Educational Progress (NAEP) 2025 Long-Term Trend (LTT)

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before December 29, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2023–SCC–0188. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Clarady, (202) 245–6347.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: National Assessment of Educational Progress (NAEP) 2025 Long-Term Trend (LTT).

OMB Control Number: 1850–0928.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: Individual or Households.

Total Estimated Number of Annual Responses: 921,531.

Total Estimated Number of Annual Burden Hours: 491,800.

Abstract: The National Assessment of Educational Progress (NAEP), conducted by the National Center for Education Statistics (NCES), is a federally authorized survey of student achievement at grades 4, 8, and 12 in various subject areas, such as mathematics, reading, writing, science, U.S. history, civics, geography, economics, technology and engineering literacy (TEL), and the arts. The National Assessment of Educational Progress Authorization Act (Pub. L. 107–279 title III, section 303) requires the assessment to collect data on specified student groups and characteristics, including information organized by race/ethnicity, gender, socio-economic status, disability, and limited English proficiency. It requires fair and accurate presentation of achievement data and permits the collection of background, noncognitive, or descriptive information that is related to academic achievement and aids in fair reporting of results. The intent of the law is to provide representative sample data on student achievement for the nation, the states, and subpopulations of students and to monitor progress over time. NAEP consists of two assessment programs: the NAEP long-term trend (LTT) assessment and the main NAEP assessment. The LTT assessments are given at the national level only and are administered to students at ages 9, 13, and 17 in a manner that is very different from that used for the main NAEP assessments. LTT reports mathematics and reading results that present trend data since the 1970s. In addition to the operational assessments, NAEP uses two other kinds of assessment activities: pilot assessments and special studies. Pilot assessments test items and procedures for future administrations of NAEP, while special studies (including the National Indian Education Study (NIES), the Middle School Transcript Study (MSTS), and the High School Transcript Study (HSTS)) are opportunities for NAEP to investigate particular aspects of the assessment without impacting the reporting of the NAEP results. The initial request for clearance of NAEP 2024 received OMB approval in April 2023 (OMB #1850–0928 v.28). Amendment #1 to the NAEP 2024 clearance package received OMB approval in June 2023 (OMB #1850–0928 v.29). Since that packages submission for public comment and OMB approval, changes have occurred to the scope of the 2024 NAEP administration, including the addition of: (1) Addition of Reading Router Pilot for grades 4 and 8, increasing costs, (2)

Addition of School and District Technology Coordinator roles and SBE survey completion, increasing burden hours, (3) Addition of protocols for the health and safety of field staff, increasing costs, (4) Reduction in SQ burden time for students, teachers and schools since COVID–19 learning recovery items are no longer adding additional time to the SQs; rather, other items were dropped to accommodate these items, reducing burden hours; and (5) Addition of Field Trial for grades, 4, 8 and 12, increasing burden hours and costs. This revision updates Part A and Part B detailing the changes to scope and references to the communication materials and the amendment schedule, Appendix A, Appendix B, Appendix C, Appendix D (added communication materials), Appendix G, Appendix I, and Appendices J1, J2, J3, and J–S to include the operational survey questionnaires (SQs), COVID–19 Learning Recovery SQs, NIES SQs, and Pilot SQs.

Dated: October 24, 2023.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–23840 Filed 10–27–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0148]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; William D. Ford Federal Direct Loan Program, Federal Direct PLUS Loan Request for Supplemental Information

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before November 29, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 377–4018.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: William D. Ford Federal Direct Loan Program, Federal Direct PLUS Loan Request for Supplemental Information.

OMB Control Number: 1845–0103.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 1,230,000.

Total Estimated Number of Annual Burden Hours: 615,000.

Abstract: The Federal Direct PLUS Loan Request for Supplemental Information serves as the means by which a parent or graduate/professional student Direct PLUS Loan applicant may provide certain information to a school that will assist the school in originating the borrower's Direct PLUS Loan award, as an alternative to providing this information to the school by other means established by the school. This is a request for a revision of the currently approved form. The form was reorganized for improved usability and flow. There has been no change to the underlying regulations.

Dated: October 24, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–23838 Filed 10–27–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Regional Advisory Committees

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of open meetings.

SUMMARY: The Department of Education (Department) announces upcoming virtual meetings for each of its 10 Regional Advisory Committees (RACs).

DATES: The date and time for each virtual meeting is listed below.

FOR FURTHER INFORMATION CONTACT: Please contact the Designated Federal Official (DFO) for each RAC, listed below:

Appalachia and West RAC: Muhammad Kara, *Muhammad.Kara@ed.gov*

Central and Southwest RAC: Rebekka Meyer, *Rebekka.Meyer@ed.gov*

Mid-Atlantic RAC: Esley Newton, *Esley.Newton@ed.gov*

Midwest and Northwest RAC: Bryan Keohane, *Bryan.Keohane@ed.gov*

Northeast and Islands RAC: Sarah Zevin, *Sarah.Zevin@ed.gov*

Pacific RAC: Erin Kelts, *Erin.Kelts@ed.gov*

Southeast RAC: Elisabeth Lembo, *Elisabeth.Lembo@ed.gov*

For information about the RACs, visit the RAC website at *https://oese.ed.gov/offices/office-of-formula-grants/program-and-grantee-support-services/comprehensive-centers-program/regional-advisory-committees/.* For questions, contact Michelle Daley, Program and Grantee Support Services, at (202) 987–1057, or email *OESE.RAC@ed.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Regional Advisory Committees: The purpose of the RACs is to advise the Secretary by (1) conducting an educational needs assessment of each region identified in section 174(b) of the Education Sciences Reform Act of 2002; and (2) submitting reports for each region based on the regional assessments. Notice of these meetings is required under 5 U.S.C chapter 10 (Federal Advisory Committee Act).

Statutory Authority: The RACs are authorized by the Educational Technical

Assistance Act of 2002 (ETAA) (Pub. L. 107–279; 20 U.S.C. 9605).

Meeting Agenda: The meetings described in this notice are the third set of meetings for the RACs in 2023. The purpose of these meetings is for each RAC to review the RAC subcommittee's recommendations and to vote on the final educational needs assessment report for the region. Meeting agendas will be posted on the RAC website, *https://oese.ed.gov/offices/office-of-formula-grants/program-and-grantee-support-services/comprehensive-centers-program/regional-advisory-committees/,* no later than November 1, 2023.

Meeting Dates and Times: Meeting times are listed in Eastern time and local time zones for each region.

Appalachia RAC (Kentucky, Tennessee, Virginia, and West Virginia):
Meeting 3: November 14, 2023, from 9 a.m. to 9:45 a.m. ET/8 a.m. to 8:45 a.m. CT.

Central RAC (Colorado, Kansas, Missouri, Nebraska, North Dakota, South Dakota, and Wyoming):
Meeting 3: November 14, 2023, from 3 p.m. to 3:45 p.m. ET/2 p.m. to 2:45 p.m. CT/1 p.m. to 1:45 p.m. MT.

Mid-Atlantic RAC (Delaware, District of Columbia, Maryland, New Jersey, and Pennsylvania):
Meeting 3: November 16, 2023, from 3 p.m. to 3:45 p.m. ET.

Midwest RAC (Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio, and Wisconsin):
Meeting 3: November 16, 2023, from 4 p.m. to 4:45 p.m. ET/3 p.m. to 3:45 p.m. CT.

Northeast and Islands RAC (Connecticut, Massachusetts, Maine, New Hampshire, New York, Puerto Rico, Rhode Island, Vermont, and the Virgin Islands):
Meeting 3: November 16, 2023, from 11 a.m. to 11:45 a.m. ET.

Northwest RAC (Alaska, Idaho, Montana, Oregon, and Washington):
Meeting 3: November 16, 2023, from 12 p.m. to 12:45 p.m. ET/10 a.m. to 10:45 a.m. MT/9 a.m. to 9:45 a.m. PT/8 a.m. to 8:45 a.m. AT.

Pacific RAC (American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Guam, Hawaii, Palau, and Republic of the Marshall Islands):
Meeting 3: November 16, 2023, from 6 p.m. to 6:45 p.m. ET/12 p.m. to 12:45 p.m. HST/11 a.m. to 12:30 p.m. SST/November 17, 2023, from 7 a.m. to 8:30 a.m. PWT/8 a.m. to 9:30 a.m. ChST/9 a.m. to 10:30 a.m. PONT/10 a.m. to 11:30 a.m. MHT.

Southeast RAC (Alabama, Florida, Georgia, Mississippi, North Carolina, and South Carolina):
Meeting 3: November 14, 2023, from 10 a.m. to 10:45 a.m. ET/9 a.m. to 9:45 a.m. CT.

Southwest RAC (Arkansas, Bureau of Indian Education, Louisiana, New Mexico, Oklahoma, and Texas):
Meeting 3: November 16, 2023, from 1 p.m. to 1:45 p.m. ET/12 p.m. to 12:45 p.m. CT/11 a.m. to 11:45 a.m. MT/10 a.m. to 10:45 a.m. PT.

West RAC (Arizona, California, Nevada, and Utah):
Meeting 3: November 14, 2023, from 5 p.m. to 5:45 p.m. ET/3 p.m. to 3:45 p.m. MT/2 p.m. to 2:45 p.m. PT.

Access to the RAC Meetings: Members of the public may access the RAC meetings via virtual teleconference. Preregistration is required by 11:59 p.m. ET, two business days before the RAC meeting date. Registration information for the RAC meetings can be found on the RAC website at *https://oese.ed.gov/offices/office-of-formula-grants/program-and-grantee-support-services/comprehensive-centers-program/regional-advisory-committees/.*

Public Comments: The deadline for written public comments was October 15, 2023. Members of the public were invited to submit written comments to each RAC between August 18 and October 15, 2023, for consideration in their regional needs assessment. The RACs are no longer accepting additional comments. Questions may be submitted to the DFO for each RAC at the email address provided under **FOR FURTHER INFORMATION CONTACT**.

Reasonable Accommodations: The virtual RAC meetings are accessible to individuals with disabilities. If you need an auxiliary aid or service for the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify Michelle Daley, Group Leader, Program and Grantee Support Services, by email at *OESE.RAC@ed.gov* no later than 48 hours before the scheduled meeting date. Although we will attempt to meet a request received after that date, we cannot guarantee availability of the requested accommodation.

Access To Records of the Meetings: Minutes of each RAC meeting will be available on the RAC website, no later than 90 days after the meeting to which they relate. Pursuant to 5 U.S.C. 1009(b), to inspect records for the RAC, the public may contact the DFO for each RAC at the email address provided under **FOR FURTHER INFORMATION CONTACT**.

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 Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site. You also may 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.

Authority: Section 206 of the ETAA, as amended (20 U.S.C. 9605).

Adam Schott,

Deputy Assistant Secretary for Policy and Programs Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2023–23914 Filed 10–27–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0186]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; 2023–24 School Pulse Panel (SPP) December and January Questionnaire Items Change Request

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before November 29, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by

selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Clarady, (202) 245–6347.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: School Pulse Panel 2023–24 Quarter 3 Revision.

OMB Control Number: 1850–0975.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 53,955.

Total Estimated Number of Annual Burden Hours: 10,175.

Abstract: The School Pulse Panel is conducted by the National Center for Education Statistics (NCES), part of the Institute of Education Sciences (IES), within the United States Department of Education. Initially, the purpose of the study was to collect extensive real-time data on issues brought to light by the COVID–19 pandemic on students and staff, as well as other important education-related issues that could inform data-driven policy decisions, in U.S. public primary, middle, high, and combined-grade schools and districts. Specifically, this was accomplished by collecting data on, among other things, the percentage of the student body starting the school year behind grade level, the types of learning recovery strategies being implemented and the perceived effectiveness of those strategies, classroom behavioral concerns, mental health services provided, and staffing issues. NCES was able to capture each of these pieces in an expedited fashion and report out findings in a matter of weeks, providing rich information to help tell the full story of what students, staff, and administrators were battling on a daily basis. The success of the quick-turnaround nature of the SPP was a clear indication of the immense value of having a real-time data collection vehicle readily available to capture content on prominent events occurring in the school environment. Therefore, stakeholders and ED leadership have asked NCES to continue this type of data collection methodology for the 2023–24 school year and beyond with content extending beyond COVID–19 pandemic impacts on the education environment.

The preliminary activities package was formally cleared in February 2023 (OMB# 1850–0975 v.1) and the SPP monthly data collection package was formally cleared in June 2023 (OMB# 1850–0975 v.2). A change request (v.3) was cleared in July 2023 to make changes to the September and October instruments and August 2023–January 2024 communication materials. A second quarterly package was formally cleared in October 2023 (OMB# 1850–0975 v.4), which contained the November 2023–January 2024 questionnaires and the February 2024–June 2024 communication materials. A change request (v.5) was cleared in October 2023 to make changes to the December 2023 and January 2024 instruments; content on these surveys was undergoing cognitive testing during the 30-day public comment period. The purpose of this memo is to accompany a revision (v.6) and to describe the changes to the research materials contained in that revision. The new revision is focused on a 30-day public comment period on new items (within the scope of the research domains previously established) to be collected on the February 2024, March 2024, and April 2024 instruments (Appendix C3). These items are considered very close to final and will go through minimal testing with school personnel to examine any comprehension concerns with item wording. Feedback from this testing, as well as additional input from SPP stakeholders, will result in modifications and additions that will be reflected in future change requests.

Dated: October 24, 2023.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–23842 Filed 10–27–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2023–FSA–0135]

Privacy Act of 1974; Matching Program

AGENCY: Federal Student Aid, U.S. Department of Education.

ACTION: Notice of a new matching program.

SUMMARY: This matching program will assist the U.S. Department of Education (Department or ED) in its obligation to ensure that borrowers who either owe balances on or who have had any of loans made under title IV of the Higher Education Act of 1965, as amended (HEA) written off due to default for the Federal Perkins Loan Program, the William D. Ford Federal Direct Loan Program, the Federal Family Education Loan (FFEL) Program, or the Federal Insured Student Loan (FISL) Program or with Teacher Education Assistance for College and Higher Education (TEACH) Grant service obligations (referred to collectively herein as ''title IV loans'') more efficiently and effectively are able to obtain Total and Permanent Disability (TPD) discharges of their title IV loans.

DATES: Submit your comments on the proposed re-establishment of the matching program on or before November 29, 2023.

The matching program will become effective on the later of the following two dates: (1) December 1, 2023, or (2) 30 days after the publication of this notice, on October 30, 2023, unless comments have been received from interested members of the public requiring modification and republication of the notice. The matching program will continue for 18 months after the effective date and may be renewed for up to an additional 12 months if, within 3 months prior to the expiration of the 18 months, the respective Data Integrity Boards of ED and the U.S. Department of Veterans Affairs (VA) determine that the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *regulations.gov*. However, if you require an accommodation or cannot otherwise submit your

comments via *regulations.gov,* please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by email, or comments submitted after the comment period. To ensure that the Department does not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

Federal eRulemaking Portal: Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov,* including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under the ''FAQ'' tab.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Brenda Vigna, Division Chief, Program Contract Management Group, Federal Student Aid, U.S. Department of Education, 830 First Street NE, Washington, DC 20202–5320. Telephone: (202) 567–1931.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), you may call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a); Office of Management and Budget (OMB) Final Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, published in the **Federal Register** on June 19, 1989 (54 FR 25818); and OMB Circular No. A–108, notice is hereby provided of the re-establishment of the matching program between the Department and VA.

Participating Agencies

The U.S. Department of Education and the U.S. Department of Veterans Affairs.

Authority for Conducting the Matching Program

The Department's legal authority to enter into the matching program and to disclose information thereunder is sections 420N(c), 437(a)(1), 455(a)(1), and 464(c)(1)(F)(ii & iii) of the HEA (20 U.S.C. 1070g–2(c), 1087(a)(1), 1087e(a)(1), and 1087dd(c)(1)(F)(ii & iii)). VA's legal authority to enter into this matching program is 38 U.S. Code § 5106.

Purpose(s)

This matching program will assist the Department in its obligation to ensure that borrowers of title IV loans more efficiently and effectively are able to obtain TPD discharge of their title IV loans. The Department will proactively send notices to borrowers with title IV loans who VA has designated as (1) having a service-connected disability rating that is 100 percent disabling, or (2) being totally disabled based on an individual unemployability rating, informing them that the Department will discharge the borrower's title IV loans no earlier than 61 days after the date that the Department sends the notification to the borrower, unless the borrower chooses to have their title IV loans discharged earlier by contacting ED or chooses to opt out of the TPD discharge within 60 days from the date that the Department sends the notification to the borrower. The Department's notices also will inform these borrowers that the Department has accepted information obtained from the VA in lieu of the borrower's submission of a VA Statement and the borrower's TPD loan discharge application, thereby simplifying the TPD discharge process for borrowers.

Categories of Individuals

This matching program covers veterans whom VA has designated as having a service-connected disability rating that is 100 percent disabling or being totally disabled based on an individual unemployability rating, as described in 38 CFR 3.4(b) and 3.340, and who have title IV loans (as defined above).

Categories of Records

This matching program covers the following records on the aforementioned individuals: the name (first, middle, and last), date of birth (DOB), and Social Security number (SSN), the 100% disabling service-connected disability rating or the individuals unemployability rating, and the disability determination date.

System(s) of Records

VA will use the VA system of records entitled ''Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records—VA'' (58VA21/22/28), last published in full in the **Federal Register** on November 8, 2021 (86 FR 61858). VA has determined that routine use 39 in the foregoing system of records is compatible with the purpose for which the information is collected and contains appropriate Privacy Act disclosure authority.

The Department will match information obtained from the VA with Department records maintained in the Department's system of records entitled ''National Student Loan Data System (NSLDS)'' (18–11–06). The NSLDS system of records notice was last published in full in the **Federal Register** on June 28, 2023 (88 FR 41934).

The Department will also maintain matched information obtained from VA in the Department's system of records entitled ''Common Services for Borrowers (CSB) (18–11–16).'' The CSB system of records notice was last published in full in the **Federal Register** on July 27, 2023 (88 FR 48449).

Accessible Format: By request to Lisa Tessitore, Program Operations Specialist, Federal Student Aid, U.S. Department of Education, 830 First Street NE, Washington, DC 20202–5320, telephone: (202) 377–3249, 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, 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.

Richard Cordray,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 2023–23855 Filed 10–27–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. PP–334–1]

Notice of Availability of Amended Record of Decision for Issuing a Presidential Permit to Energia Sierra Juarez U.S. Transmission, LLC, for the Energia Sierra Juarez U.S. Transmission Line Project

AGENCY: Grid Deployment Office, U.S. Department of Energy (DOE).

ACTION: Notice of availability.

SUMMARY: The Grid Deployment Office (GDO) of the Department of Energy (DOE) gives notice of an Amended Record of Decision (ROD) published under the National Environmental Policy Act of 1969 (NEPA) and DOE's NEPA implementing regulations. This Amended ROD supports DOE's decision to amend the existing Presidential permit issued to Energia Sierra Juarez U.S. Transmission, LLC (ESJ), to construct, operate, maintain, and connect a double-circuit, 230,000-volt (230-kV) electric transmission line (ESJ Tie Line) across the U.S.-Mexico border in eastern San Diego County, California.

FOR FURTHER INFORMATION CONTACT: Christina Gomer, Grid Deployment Office (GD–20), U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, by phone at (240) 474–2403, or by email at *electricity.exports@hq.doe.gov.*

For general information on the DOE NEPA process, contact Brian Costner, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585; by email at *askNEPA@hq.doe.gov;* or by facsimile at (202) 586–7031.

SUPPLEMENTARY INFORMATION: The potential environmental impacts associated with issuance of a Presidential permit to authorize the construction of ESJ's proposed transmission line and operation of the line with a capacity to transmit up to 1,250 megawatts (MW) were analyzed in the Energia Sierra Juarez U.S. Transmission Line Project Final Environmental Impact Statement (FEIS)(DOE/EIS–0414) issued in 2012 and Supplemental to the Energia Sierra Juarez U.S. Transmission Line Project Final Environmental Impact Statement (SEIS) (DOE/EIS–0414–S1) issued in 2018.

Although DOE analyzed the environmental impacts of up to 1,250 MW in the FEIS and SEIS, DOE issued a Record of Decision (ROD) and Presidential Permit No. PP–334, both in August of 2012, which conditioned the maximum non-simultaneous rate of transmission over the permitted facilities to no-greater-than 400 MW (Article 3, of PP–334). The permit condition limiting the rate of transmission to 400 MW was not based on any concerns about environmental impacts disclosed in the FEIS. Rather, this limit was included in the permit because grid reliability studies at the time were completed only for the interconnection of an initial 400 MW of electrical output.

On May 18, 2022, ESJ submitted an application requesting that DOE amend Article 3 of PP–334 to increase the maximum authorized rate of transmission across the approved facilities to 700 MW (Proposed Action). GDO has evaluated the environmental effects of the Proposed Action in Supplemental Analysis Regarding the Energia Sierra Juarez U.S. Transmission Line Project Final Environmental Impact Statement (SA) (DOE/EIS–0414–S1–SA–1). In this ROD, DOE announces its decision to issue an amended Presidential permit (PP–334–1) to increase the operational limit from 400 MW to 700 MW. The FEIS, SEIS, SA, and ROD are available on the DOE NEPA website at: *www.energy.gov/nepa/articles/doeeis-0414-amended-record-decision.*

Signing Authority

This document of the Department of Energy was signed on October 24, 2023, by Maria D. Robinson, Director, Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on October 24, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–23834 Filed 10–27–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–181–000]

Frankland Road 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 Frankland Road 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 November 13, 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 24, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–23922 Filed 10–27–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas and Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP24–50–000.
Applicants: Portland Natural Gas Transmission System.
Description: § 4(d) Rate Filing: Termination of APP Contract No. 246682 to be effective 11/23/2023.
Filed Date: 10/23/23.
Accession Number: 20231023–5177.
Comment Date: 5 p.m. ET 11/6/23.

Docket Numbers: RP24–51–000.
Applicants: Discovery Gas Transmission LLC.
Description: § 4(d) Rate Filing: Title Page Update to be effective 11/24/2023.
Filed Date: 10/24/23.
Accession Number: 20231024–5018.
Comment Date: 5 p.m. ET 11/6/23.

Docket Numbers: RP24–52–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 10.24.23 Negotiated Rates—Mercuria Energy America, LLC R–7540–02 to be effective 11/1/2023.
Filed Date: 10/24/23.
Accession Number: 20231024–5020.
Comment Date: 5 p.m. ET 11/6/23.

Docket Numbers: RP24–53–000.
Applicants: OkTex Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Requests for Service to be effective 12/20/2023.
Filed Date: 10/24/23.
Accession Number: 20231024–5043.
Comment Date: 5 p.m. ET 11/6/23.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP23–1115–000.
Applicants: Northwest Pipeline LLC.
Description: Report Filing: Requested Effective Date Revision for RP23–1115 to be effective N/A.
Filed Date: 10/23/23.
Accession Number: 20231023–5138.
Comment Date: 5 p.m. ET 11/6/23.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: October 24, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–23919 Filed 10–27–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF14–1–007]

Southwestern Power Administration; Notice of Filing

Take notice that on October 11, 2023, Southwestern Power Administration submitted tariff filing: 10 CFR 903.23: 2013 IS Rate Extension Informational Filing—2023 to be effective 10/1/2023.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended

access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Comment Date: 5 p.m. Eastern Time on November 13, 2023.

Dated: October 20, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–23827 Filed 10–27–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF23–8–000]

Western Area Power Administration; Notice of Filing

Take notice that on August 8, 2023, Western Area Power Administration submitted tariff filing: 301.1: Fiscal Year 2024 Base Charge and Rates for Boulder Canyon Project Electric Service to be effective 10/1/2023.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *https://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*https://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Comment Date: 5 p.m. Eastern Time on November 20, 2023.

Dated: October 20, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–23830 Filed 10–27–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24–4–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on October 11, 2023, Southern Star Central Gas Pipeline, Inc. (Southern Star) filed a prior notice request for authorization, in accordance with sections 157.205, and 157.208 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act to increase the maximum allowable operating pressure (MAOP) on Southern Star's delivery laterals ESA–001 and ESA–004 in Douglas County, Kansas. Specifically, Southern Star filed this application for authorization to increase the maximum allowable operating pressure on its delivery laterals ESA–001 and ESA–004 from a current MAOP of 375 pounds per square inch (psig) to 575 psig, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*https://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 the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application should be directed to Cindy C. Thompson, Director, Regulatory, Compliance, and Information Governance, 4700 State Route 56, Owensboro, Kentucky 42301 at (270) 852–4655; or email at *Cindy.Thompson@southernstar.com.*

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to

intervene, and comments is 5:00 p.m. Eastern Time on December 20, 2023. How to file protests, motions to intervene, and comments is explained.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov*.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[1] any person [2] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[3] and must be submitted by the protest deadline, which is December 20, 2023. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is December 20, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/how-guides* .

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before December 20, 2023. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP24–4–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [6]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP24–4–000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To send via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FERCOnlineSupport@ferc.gov*.

Protests and motions to intervene must be served to the applicant either by mail or email (with a link to the document) at: to Cindy C. Thompson, Director, Regulatory, Compliance, and Information Governance, 4700 State Route 56, Owensboro, Kentucky 42301 or by email (with a link to the document) at *Cindy.Thompson@southernstar.com*.

Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

register, go to *https://www.ferc.gov/ferc-online/overview*.

Dated: October 20, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–23826 Filed 10–27–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF16–2–002]

Southwestern Power; Notice of Filing

Take notice that on October 11, 2023, Southwestern Power Administration submitted tariff filing: 10 CFR 903.23: 2015 SRD Rate Extension Informational Filing—2023 to be effective 10/1/2023.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *https://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*https://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Comment Date: 5 p.m. Eastern Time on November 13, 2023.

Dated: October 20, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–23829 Filed 10–27–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. AD22–11–000; AD21–9–000]

Office of Public Participation Fundamentals for Participating in FERC Matters; Supplemental Notice of Pre-Recorded Workshop: ''Fundamentals of Intervention in FERC Matters''

Filing a Motion to Intervene or Intervention is the procedural pathway to becoming a party in a proceeding at Federal Energy Regulatory Commission (FERC). On October 25, 2023, Office of Public Participation (OPP) staff made publicly available the educational video of WorkshOPP: Fundamentals of Intervention in FERC Matters. This video is available on *www.ferc.gov/OPP* and on FERC's YouTube channel under OPP's Playlist at *https://www.youtube.com/@FERC/playlists* or at *https://youtu.be/C-nkONjA4Mk.* Spanish captioning is available on the video.

WorkshOPP: ''Fundamentals of Intervention in FERC Matters'' explains how and why a member of the public may choose to intervene in energy infrastructure projects (natural gas pipelines, liquefied natural gas (LNG) terminals, or hydroelectric dams) proceedings, and/or electric rates proceedings. Staff also addresses common questions about filing an intervention and demonstrate how to submit a Motion to Intervene using FERC online.

Dated: October 24, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–23909 Filed 10–27–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24–18–000.

Applicants: Placerita ESS, LLC.

Description: Placerita ESS, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 10/23/23.

Accession Number: 20231023–5147.

Comment Date: 5 p.m. ET 11/13/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER22–2029–001.

Applicants: PJM Interconnection, L.L.C.

Description: Compliance filing: Compliance Implementing HSIM with 99% Confidence Interval, EL22–32, ER22–703 to be effective 12/12/2023.

Filed Date: 10/23/23.

Accession Number: 20231023–5148.

Comment Date: 5 p.m. ET 11/13/23.

Docket Numbers: ER24–184–000.

Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: American Transmission Systems, Incorporated submits tariff filing per 35.13(a)(2)(iii: ATSI submits Revised Interconnection Agreement, Service Agreement No. 5196 to be effective 12/23/2023.

Filed Date: 10/23/23.

Accession Number: 20231023–5150.

Comment Date: 5 p.m. ET 11/13/23.

Docket Numbers: ER24–185–000.

Applicants: The United Illuminating Company.

Description: § 205(d) Rate Filing: Localized Costs Sharing Agreement No. 21 to be effective 12/1/2021.

Filed Date: 10/23/23.

Accession Number: 20231023–5166.

Comment Date: 5 p.m. ET 11/13/23.

Docket Numbers: ER24–186–000.
Applicants: The United Illuminating Company.
Description: § 205(d) Rate Filing: Localized Costs Sharing Agreement No. 22 to be effective 12/1/2021.
Filed Date: 10/23/23.
Accession Number: 20231023–5167.
Comment Date: 5 p.m. ET 11/13/23.

Docket Numbers: ER24–187–000.
Applicants: The United Illuminating Company.
Description: § 205(d) Rate Filing: Localized Costs Sharing Agreement No. 23 to be effective 12/1/2021.
Filed Date: 10/23/23.
Accession Number: 20231023–5168.
Comment Date: 5 p.m. ET 11/13/23.

Docket Numbers: ER24–188–000.
Applicants: Wild Springs Solar, LLC.
Description: Baseline eTariff Filing: Application for MBR Authorization, Request for Waivers and Expedited Treatment to be effective 11/1/2023.
Filed Date: 10/23/23.
Accession Number: 20231023–5176.
Comment Date: 5 p.m. ET 11/13/23.

Docket Numbers: ER24–189–000.
Applicants: Michigan Electric Transmission Company, LLC.
Description: § 205(d) Rate Filing: Filling of an Agency Agreement for Third-Party Attachments to be effective 12/24/2023.
Filed Date: 10/24/23.
Accession Number: 20231024–5025.
Comment Date: 5 p.m. ET 11/14/23.

Docket Numbers: ER24–190–000.
Applicants: Chisholm View Wind Project II, LLC.
Description: § 205(d) Rate Filing: Chisholm View Wind Project II, LLC SFA Certificate of Concurrence to be effective 10/25/2023.
Filed Date: 10/24/23.
Accession Number: 20231024–5034.
Comment Date: 5 p.m. ET 11/14/23.

Docket Numbers: ER24–191–000.
Applicants: Midcontinent Independent System Operator, Inc., Union Electric Company.
Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2023–10–24_SA 1982 UE-Linneus, Missouri 1st Rev WDS to be effective 1/1/2024.
Filed Date: 10/24/23.
Accession Number: 20231024–5049.
Comment Date: 5 p.m. ET 11/14/23.

Docket Numbers: ER24–192–000.
Applicants: MRP Elgin LLC.
Description: Initial rate filing: MRP Elgin Initial Reactive Rate Schedule to be effective 12/31/9998.
Filed Date: 10/24/23.
Accession Number: 20231024–5064.
Comment Date: 5 p.m. ET 11/14/23.

Docket Numbers: ER24–193–000.
Applicants: MRP Rocky Road LLC.
Description: Initial rate filing: MRP Rocky Road Initial Reactive Rate Schedule to be effective 12/31/9998.
Filed Date: 10/24/23.
Accession Number: 20231024–5066.
Comment Date: 5 p.m. ET 11/14/23.

Docket Numbers: ER24–194–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX-Peacock Energy Project (Jackalope) 1st A&R Generation Interconnection Agr to be effective 10/6/2023.
Filed Date: 10/24/23.
Accession Number: 20231024–5104.
Comment Date: 5 p.m. ET 11/14/23.

Docket Numbers: ER24–195–000.
Applicants: PPL Electric Utilities Corporation, PJM Interconnection, L.L.C.
Description: Tariff Amendment: PPL Electric Utilities Corporation submits tariff filing per 35.15: Notice of Cancellation of ESCA, SA No. 6255 to be effective 12/24/2023.
Filed Date: 10/24/23.
Accession Number: 20231024–5111.
Comment Date: 5 p.m. ET 11/14/23.

Docket Numbers: ER24–196–000.
Applicants: Grand Tower Energy Center, LLC.
Description: Tariff Amendment: Grand Tower Notice of Cancellation of Market-Based Rate Tariff to be effective 12/23/2023.
Filed Date: 10/24/23.
Accession Number: 20231024–5112.
Comment Date: 5 p.m. ET 11/14/23.

Docket Numbers: ER24–197–000.
Applicants: ITC Midwest LLC.
Description: § 205(d) Rate Filing: Filing of Joint Use Pole Agmt (RS 228) & Operation & Maintenance Agmt (RS 229) to be effective 12/24/2023.
Filed Date: 10/24/23.
Accession Number: 20231024–5120.
Comment Date: 5 p.m. ET 11/14/23.

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 24, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–23925 Filed 10–27–23; 8:45 am]

BILLING CODE 6717–01–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. CP16–10–000	10–17–2023	FERC Staff.[1]
2. CP22–2–000	10–17–2023	FERC Staff.[2]
3. CP22–2–000	10–17–2023	FERC Staff.[3]
Exempt:		
1. CP22–2–000	10–20–2023	U.S. Senate.[4]

[1] Emailed comments dated 10/1/23 from William F. Limpert.
[2] Emailed comments from Kristen Sartor, and 10 other individuals.
[3] Emailed comments from Alex Fay, and 10 other individuals.
[4] Senators Jeffrey A. Merkley and Patty Murray.

Dated: October 24, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–23924 Filed 10–27–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–188–000]

Wild Springs 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 Wild Springs 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 November 13, 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 24, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–23921 Filed 10–27–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF16–1–002]

Southwestern Power Administration; Notice of Filing

Take notice that on October 11, 2023, Southwestern Power Administration submitted tariff filing: 10 CFR 903.23: 2015 RDW Rate Extension Informational Filing—2023 to be effective 10/1/2023.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the

Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *https://www.ferc.gov*. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*https://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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Comment Date: 5 p.m. Eastern Time on November 13, 2023.

Dated: October 20, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–23828 Filed 10–27–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–171–000]

Skysol, 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 Skysol, 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 November 13, 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 24, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–23926 Filed 10–27–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF23–9–000]

Western Area Power Administration; Notice of Filing

Take notice that on August 8, 2023, Western Area Power Administration submitted tariff filing: 10 CFR 903.23: transmission service rates for the Pacific Northwest-Pacific Southwest Intertie Project and the transmission and firm electric service formula rates for the Parker-Davis Project to be effective 10/1/2023.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *https://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*https://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Comment Date: 5 p.m. Eastern Time on November 20, 2023.

Dated: October 20, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–23832 Filed 10–27–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24–15–000.
Applicants: Wild Springs Solar, LLC.
Description: Wild Springs Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 10/19/23.
Accession Number: 20231019–5161.
Comment Date: 5 p.m. ET 11/9/23.

Docket Numbers: EG24–16–000.
Applicants: Skysol, LLC.
Description: Skysol, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 10/20/23.
Accession Number: 20231020–5059.
Comment Date: 5 p.m. ET 11/13/23.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL24–5–000.
Applicants: Louisiana Public Service Commission, Arkansas Public Service Commission, Council of the City New Orleans.
Description: Complaint of Louisiana Public Service Commission, et al. v. *System Energy Resources, Inc., et al.*
Filed Date: 10/18/23.
Accession Number: 20231018–5176.
Comment Date: 5 p.m. ET 11/7/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2214–008.
Applicants: Zion Energy LLC.
Description: Compliance filing: Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.
Filed Date: 10/19/23.
Accession Number: 20231019–5159.
Comment Date: 5 p.m. ET 11/9/23.

Docket Numbers: ER12–954–008.
Applicants: Calpine Mid Merit, LLC.
Description: Compliance filing: Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.
Filed Date: 10/19/23.
Accession Number: 20231019–5138.
Comment Date: 5 p.m. ET 11/9/23.

Docket Numbers: ER14–873–007.
Applicants: Calpine New Jersey Generation, LLC.
Description: Compliance filing: Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.
Filed Date: 10/19/23.
Accession Number: 20231019–5150.
Comment Date: 5 p.m. ET 11/9/23.

Docket Numbers: ER15–2495–006.
Applicants: Calpine New Jersey Generation, LLC.
Description: Compliance filing: Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.
Filed Date: 10/19/23.
Accession Number: 20231019–5151.
Comment Date: 5 p.m. ET 11/9/23.

Docket Numbers: ER19–2916–004.
Applicants: Calpine Mid-Merit II, LLC.
Description: Compliance filing: Informational Filing Regarding Upstream Transfer of Ownership to be effective N/A.
Filed Date: 10/19/23.
Accession Number: 20231019–5148.
Comment Date: 5 p.m. ET 11/9/23.

Docket Numbers: ER24–155–000.
Applicants: California Independent System Operator Corporation.
Description: Compliance filing: 2023–10–19 Compliance Filing—FERC Order No. 895 to be effective 8/21/2023.
Filed Date: 10/19/23.
Accession Number: 20231019–5145.
Comment Date: 5 p.m. ET 11/9/23.

Docket Numbers: ER24–156–000.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Compliance Filing to Order No. 895 on Credit-Related Info Sharing in Markets to be effective 10/21/2023.
Filed Date: 10/19/23.
Accession Number: 20231019–5155.
Comment Date: 5 p.m. ET 11/9/23.

Docket Numbers: ER24–157–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 4154 Pixley Solar Energy & ITCGP Facilities Service Agr to be effective 12/19/2023.
Filed Date: 10/20/23.
Accession Number: 20231020–5004.
Comment Date: 5 p.m. ET 11/13/23.

Docket Numbers: ER24–158–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original NSA, Service Agreement No. 7109; Queue No. AF1–019 to be effective 12/20/2023.
Filed Date: 10/20/23.
Accession Number: 20231020–5006.

Comment Date: 5 p.m. ET 11/13/23.

Docket Numbers: ER24–159–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amend ISA/CSA, SA Nos. 5245 & 5250; Queue No. AB2–067/AC1–044/AD2–189 (amend) to be effective 12/20/2023.

Filed Date: 10/20/23.

Accession Number: 20231020–5038.

Comment Date: 5 p.m. ET 11/13/23.

Docket Numbers: ER24–160–000.

Applicants: PacifiCorp.

Description: Tariff Amendment: Termination of Black Hills NITSA Rev 3 (SA 347) to be effective 12/31/2023.

Filed Date: 10/20/23.

Accession Number: 20231020–5043.

Comment Date: 5 p.m. ET 11/13/23.

Docket Numbers: ER24–161–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Initial Filing of Service Agreement FERC No. 915 to be effective 9/20/2023.

Filed Date: 10/20/23.

Accession Number: 20231020–5065.

Comment Date: 5 p.m. ET 11/13/23.

Docket Numbers: ER24–162–000.

Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: American Transmission Systems, Incorporated submits tariff filing per 35.13(a)(2)(iii: ATSI submits Revised Interconnection Agreement, Service Agreement No. 3992 to be effective 12/20/2023.

Filed Date: 10/20/23.

Accession Number: 20231020–5066.

Comment Date: 5 p.m. ET 11/13/23.

Docket Numbers: ER24–163–000.

Applicants: Exelon Business Services Company, LLC, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Exelon Business Services Company, LLC submits tariff filing per 35.13(a)(2)(iii: BGE, PECO & Pepco Request for Order Authorizing Abandoned Plant Incentive to be effective 12/20/2023.

Filed Date: 10/20/23.

Accession Number: 20231020–5067.

Comment Date: 5 p.m. ET 11/13/23.

Docket Numbers: ER24–164–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Amendment to Service Agreement FERC No. 891 to be effective 9/21/2023.

Filed Date: 10/20/23.

Accession Number: 20231020–5070.

Comment Date: 5 p.m. ET 11/13/23.

Docket Numbers: ER24–165–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2023–10–20_Order No. 895 Credit Information Sharing Compliance to be effective 10/21/2023.

Filed Date: 10/20/23.

Accession Number: 20231020–5073.

Comment Date: 5 p.m. ET 11/13/23.

Docket Numbers: ER24–166–000.

Applicants: Sun Streams Expansion, LLC.

Description: § 205(d) Rate Filing: Amendment to LGIA Co-Tenancy Agreement to be effective 10/21/2023.

Filed Date: 10/20/23.

Accession Number: 20231020–5074.

Comment Date: 5 p.m. ET 11/13/23.

Docket Numbers: ER24–167–000.

Applicants: Sun Pond, LLC.

Description: § 205(d) Rate Filing: Certificate of Concurrence for Amendment to LGIA Co-Tenancy Agreement to be effective 10/21/2023.

Filed Date: 10/20/23.

Accession Number: 20231020–5081.

Comment Date: 5 p.m. ET 11/13/23.

Docket Numbers: ER24–168–000.

Applicants: Pennsylvania Power Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Pennsylvania Power Company submits tariff filing per 35.13(a)(2)(iii: Penn Power Amends 9 ECSAs (5390 5516 5569 5640 5703 6041 6334 6347 6618) to be effective 12/31/9998.

Filed Date: 10/20/23.

Accession Number: 20231020–5084.

Comment Date: 5 p.m. ET 11/13/23.

Docket Numbers: ER24–169–000.

Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: Niagara Mohawk Power Corporation submits tariff filing per 35.13(a)(2)(iii: Niagara Mohawk 205: Amended ISA between NMPC & Cedar Rapids Transmission (SA336) to be effective 9/20/2023.

Filed Date: 10/20/23.

Accession Number: 20231020–5091.

Comment Date: 5 p.m. ET 11/13/23.

Docket Numbers: ER24–170–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of ISA, SA No. 5485; Queue No. AB1–107 Re: Withdrawal to be effective 12/20/2023.

Filed Date: 10/20/23.

Accession Number: 20231020–5102.

Comment Date: 5 p.m. ET 11/13/23.

Docket Numbers: ER24–171–000.

Applicants: Skysol, LLC.

Description: Baseline eTariff Filing: Skysol, LLC MBR Tariff to be effective 11/30/2023.

Filed Date: 10/20/23.

Accession Number: 20231020–5103.

Comment Date: 5 p.m. ET 11/13/23.

Docket Numbers: ER24–172–000.

Applicants: FirstEnergy Pennsylvania Electric Company.

Description: Baseline eTariff Filing: 2023.10.20—Baseline Market-Based Rate Tariff Filing to be effective 10/20/2023.

Filed Date: 10/20/23.

Accession Number: 20231020–5106.

Comment Date: 5 p.m. ET 11/13/23.

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 20, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–23831 Filed 10–27–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southeastern Power Administration

Notice of Issuance of Final Power Marketing Policy, for the Jim Woodruff System Project

AGENCY: Southeastern Power Administration (Southeastern), DOE.

ACTION: Notice of final power marketing policy.

SUMMARY: The Administrator has adopted the attached Final Power Marketing Policy for the Jim Woodruff System Project. The policy will be effective thirty days after publication in the **Federal Register**. The policy was developed in accordance with Southeastern's Procedure for Public Participation in the Formulation of Marketing Policy published July 6, 1978, pursuant to a notice of intent to formulate a power marketing policy published in the **Federal Register** of August 5, 2022, and a proposed policy published in the **Federal Register** of April 7, 2023. A public comment forum was held via a virtual web based meeting on June 8, 2023. Comments were due on or before June 23, 2023. Twelve comments were received relative to the proposed policy. The Administrator appointed a Staff Committee to prepare a Staff Evaluation of all oral and written comments and responses received by Southeastern and to make appropriate recommendations. The Staff Evaluation was completed on Sept 5, 2023. Following the Staff Evaluation, the Administrator decided to adopt the policy as modified.

SUPPLEMENTARY INFORMATION:

The Final Power Marketing Policy sets forth the guidelines which Southeastern will follow in the future disposition of power from the Jim Woodruff System. The policy covers power from the Jim Woodruff project and establishes the marketing area and specifies the allocation of power to area preference customers. The policy also deals with utilization of area utility systems for essential purposes, wholesale rates, and energy and economic efficiency measures.

Southeastern has determined this action fits within the following categorical exclusions listed in appendix B to subpart D of 10 CFR 1021: B4.1 (Contracts, policies, and marketing and allocation plans for electric power). Categorically excluded projects and activities do not require preparation of either an environmental impact statement or an environmental assessment.

A recital of the primary comments regarding the proposed power marketing policy, responses to those comments, and specific decisions and changes in the proposed power marketing policy approved by the Administrator precede the text of the final policy as adopted.

Primary Comments and Responses

1. *Comment:* The proposed policy states that the Jim Woodruff Lock and Dam (Project) has a total capacity of 36 MW. The Policy also lists the capacity allocations for each of the current preference customers which adds up to the total 36 MW. It was our understanding from SEPA's February 2, 2023, presentation that the total installed capacity of the Project is 43.345 MW, and the preference customers will have access to the total generation each hour measured at the busbar based upon each preference customer's pro-rata share. The proposed policy states that if the actual generation is less than the allocated capacity in any hour then the amount delivered to each preference customer will be reduced, pro-rata; however, the proposed policy is silent as to what happens if the actual generation in any hour is in excess of the 36 MW. Is it the intention that any generation in excess of 36 MW would be allocated pro-rata share as well? Should the proposed policy be amended to address how total generation in excess of 36 MW will be handled?

Response: Southeastern states its goal in the proposed policy is to allocate all available and usable system power to preference customers. The legacy capacity value of 36 MW is used in the proposed Marketing policy as a denominator for calculating the pro-rata share. Nameplate capacity is 48.165 MVA but maximum operating capacity is limited to 43.345 MW. There are many hours, depending on streamflow, where the project generates less than 36 MW and hours where generation is above 36 MW—up to the plant maximum operating capacity. As a ''run-of-the-river'' project, there is limited ability to dispatch against streamflow. ''Preference customers'' are those entities with customer contracts. Preference customers would receive a pro-rata share of energy generated. Southeastern does not think an amended Policy is needed to address total energy allocations.

2. *Comment:* If the preference customers do have access to their pro-rata share of the actual Project generation each hour, under the new contracts, what will the billing demand determinant be based upon? Will it be based upon the actual Project peak generation for the month or capped at the total 36 MW?

Response: The rate structure for Jim Woodruff currently contains a metered energy and a monthly demand charge. This construct is subject to periodic rate-development proceedings and will be addressed there. The Jim Woodruff rates are effective through September 30, 2026. Southeastern intends to keep the current JW–1–L rate where monthly billing demand will be based on capacity allocations. Energy billing will be based on the customer ratio-share of monthly project net metered generation at the bus-bar.

3. *Comment:* The proposed policy states that the Final Marketing Policy will be implemented through contracts for terms not to exceed ten years and the existing preference customers can continue with their current allocated shares of capacity. Will all Preference-Eligible customers listed in Appendix A have access to a pro-rata share of the total capacity of the Project capacity after the end of the ten-year contracts with the existing preference customers (*i.e.,* subject to the 500 kW limitation) or will the existing preference customers have right of first refusal?

Response: Southeastern's marketing area in the Final Policy is the entire state of Florida and contains 53 preference-eligible public bodies and cooperatives based on 2020 load information. Southeastern currently has contracts with six of these preference-eligible entities. Southeastern does not expect any additional power or energy to be marketable for the foreseeable future as a result of the Duke Energy Florida contract termination so Southeastern proposes to continue arrangements with these six customers. However, Southeastern has included a mechanism in the proposed policy to allow power and energy to be allocated should any become available in the future. Thus, the expiration of the initial contract term could allow system power or energy to be made available to other preference-eligible customers. The proposed policy does not convey a ''right of first refusal'' to any customer nor an obligation on the government to allocate a pro-rata share of the total system capacity across all preference-eligible customers at the end of the contract term.

4. *Comment:* The proposed policy states that ''both existing and preference-eligible customers will be eligible to share equitably in any capacity remaining after reductions for reserves, losses or capacity and energy relinquished by existing customers''. What is meant by the term ''reserves''?

Response: Reserves include capacity to meet station service needs and any other operational requirements at the Project.

5. *Comment:* Under the Utilization at Utility Systems section of the proposed policy, there is a statement that it may be necessary for Southeastern to contract with a third party to ''dispose'' of system power under ''reasonable and acceptable marketing arrangements''. If the preference customers are receiving a pro-rata share of all of the output, when

would a condition exist that would result in the disposal of system power? It is our understanding from the February 2nd meeting that the contracting preference customers will be responsible for contracting with Duke Energy Florida (DEF) for the transmission of the Project power (either network transmission service or presumably point-to-point transmission service for those preference customers that need to wheel power across DEF's transmission system). We understand that Southeastern will be entering into an interconnection agreement with DEF. Does Southeastern expect a need to contract with DEF or another utility for any other transmission or marketing arrangement (*i.e.,* other than the interconnection agreement with DEF)?

Response: Dispose is referred to Southeastern's authorizing legislation, section 5, Flood Control Act 1944, 16 U.S.C. 825s. The proposed policy specifies delivery to the project bus-bar (Point of Interconnection with DEF). Southeastern may be required to enter into a re-imbursement agreement with the Host Balancing Authority (DEF) in the event arrangements need to be implemented to allow Jim Woodruff to be treated as a Pseudo-Tied generator, as that term is defined by the North American Electric Reliability Corporation. It is expected that if this becomes necessary, it will be a financial transaction and not a bartered marketing arrangement.

6. *Comment:* For Seminole to schedule the Project power each hour under the DEF transmission agreement, Seminole will require real time telemetry access to the actual Project net generation. Seminole will plan to contact Carter Edge to make those arrangements.

Response: Southeastern does not have real-time telemetry at Jim Woodruff. It is expected that this information is available from DEF via the Eastern Interconnection Data Sharing Network (EIDSN).

7. *Comment:* The proposed power marketing policy indicates it will be implemented through contracts with terms not to exceed ten years. How was the ten-year term chosen? Why or under what circumstances would the Southeastern Power Administration (''SEPA'') consider a term of less than ten-years? Did SEPA consider a contract term that lasts for the life of the project, with rights for a preference customer to exit earlier, if it desires to do so? Will the terms of all preference customer contracts have to be the same? To the extent that other SEPA power marketing policies have standard contract terms of 20 years, with evergreen provisions, the Cities would urge SEPA that the Jim Woodruff System Project should, at least, have contract terms of the same length.

Response: The proposed power marketing policy supports the statutory authority granted to the Administrator in section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, allowing power and energy not required in the operation of project to be transmitted and sold in such a manner to as to encourage the most widespread use thereof at the lowest rates possible to consumers consistent with sound business principles. Southeastern agrees that providing for a contract term up to twenty years would give maximum flexibility in the negotiations under this policy and will allow for contracts to be entered into for a term greater than ten years if necessary or if found desirable during contract negotiations. Contracts can be extended beyond the initial term if acceptable by the parties.

8. *Comment:* The proposed power marketing policy states: ''Resale rate provisions requiring the benefits of Southeastern's power to be passed on to the ultimate consumer will be included in each customer contract with Southeastern which provides for Southeastern to supply more than 25% of the customer's total power requirements . . . .'' Why are these resale rate provisions necessary? And, why do they only apply to a preference customer whose supply from SEPA is more than 25% of the customer's total power requirement? How the 25% is calculated, and is it a one-time calculation, or is it periodically redone to pick up changes in total power requirements? Will these resale rate provisions apply to imbalance sales? Specifically, does SEPA expect the Cities to be subject to such resale rate provisions? If so, it will be important that the resale rate provisions not conflict with the imbalance sale terms of filed FERC tariffs for the relevant transmission provider. Further, any resale rate or other provisions should be cognizant that the Cities are members of a joint action agency and that there needs to be a mechanism available for the cities to integrate their wholesale power supply needs with the portfolio of the joint action agency, including the possibility of assigning or transferring the output of the SEPA power to the joint action agency for the duration of term the joint action agency may be supplying the balance of each of the City's wholesale power needs.

Response: After review of Southeastern's other three marketing areas the agency will modify the policy to eliminate the Resale Rates section. Southeastern will modify the policy to add the Florida Municipal Power Agency as a preference eligible customer as it represents solely municipal customers.

9. *Comment:* The proposed power marketing policy indicates that SEPA can dispose of system power under reasonable and acceptable marketing arrangements. Who determines the reasonability and acceptability of the marketing arrangements? Will there be an opportunity for preference customers to provide input on those determinations? Under what circumstances would SEPA anticipate having to dispose of system power? To the extent that SEPA does dispose of system power, how will revenue from those transactions be applied to SEPA's revenue requirements, as a credit to the benefit of the preference customers? If the disposal of system power results in a net cost to SEPA, will preference customers be responsible for any of that cost and, if so, to what extent?

Response: Southeastern has used a public participation process for formulating power marketing policies since 1978 with procedures outlined in the Procedure for Public Participation in the Formulation of Marketing Policy (43 FR 29186, 29187, July 6, 1978) to dispose of system power. The Jim Woodruff System will continue to be hydraulically, electrically, and financially integrated as a single project system. Revenue requirements are calculated to recover operating expenses and the federal capital investment and rates are set for the sale of power and energy in excess of use at the project to preference customers in a manner consistent with sound business principles. A periodic rate filing process where costs and revenues are calculated and shared via public forums allows for public participation and rates to be reviewed and approved by the Federal Energy Regulatory Commission (FERC). Southeastern will continue to use cost-based rates subject to Congressional, FERC and Department of Energy mandates.

10. *Comment:* The proposed power marketing policy states: ''Each customer purchasing Southeastern's power shall agree to take reasonable measures to encourage the conservation of energy by ultimate consumers.'' Where will this referenced agreement to encourage conservation reside? As a part of the project contracts, or elsewhere? Why is this conservation encouragement measure included here? Will SEPA require quantitative or qualitative tracking and reporting of conservation encouragement measures? If efforts to encourage conservation to not prove to

reduce energy consumption by a preference customer's ultimate consumers, will that have a negative impact on preference customers in any manner?

Response: Power marketing policies in other systems marketed by Southeastern include the referenced wording which encourages energy conservation by preference customers consistent with guidance in the Department Energy Organization Act, 42 U.S.C. 7112 (1977), where departmental elements are directed ''to promote maximum possible energy conservation measures in connection with the activities within their respective jurisdictions.'' Southeastern currently has no plans for qualitative and quantitative tracking of performance for conservation measures employed by ultimate users. This topic will be addressed in customer contracts.

11. *Comment:* SEPA has indicated that it will now have to enter into a large generator interconnection agreement (''LGIA''), and take interconnection service, from Duke Energy Florida (''DEF''), following the termination of the existing DEF arrangement with SEPA on April 20, 2024. If studies associated with the LGIA indicate system impacts on the DEF system, that have to be paid for by SEPA to receive interconnection service, when does SEPA expect to receive those cost estimates? Assuming that there are any costs that must be paid to DEF under the LGIA, the Cities expect those costs to be borne proportionately through rates by each of the preference customers. Under any circumstance, would that not be the case? If there are costs that have to be paid to DEF for interconnection service, subject to refund, how will those refund amounts be distributed to preference customers?

Response: Southeastern does not anticipate initial or normal recurring costs associated with implementing the LGIA with Duke Energy Florida. Any special occurrence costs would be accounted for in a manner acceptable to Southeastern and the preference customers in the rate setting process.

12. *Comment:* The SeFPC supports the following determinations made by SEPA in the proposed policy:

1. SEPA will follow the guidance of the Flood Control Act of 1944;

2. SEPA will deliver power at the bus-bar and pursue appropriate rate design and operational solutions to maintain ''the Jim Woodruff system financially, electrically, and hydraulically independent of any other Southeastern system'';

3. Considering the equitable contributions made by existing SEPA customers who receive the benefit of the Jim Woodruff system;

4. Continuing with the allocated share of capacity for existing customers;

5. Including a process for the distribution of Renewable Energy Certificates (''RECs'') for preference customers of the Jim Woodruff system; and

6. Declaring that no rates will be established for the RECs.

The proposed policy indicates that the existing customers will be offered new contracts for a term of ten years upon the adoption of the marketing policy. The ten-year term reflects an approach adopted by SEPA forty years ago with the Cumberland System of Projects. Since that time, SEPA has adopted approaches for other marketing areas which provide assurances for the availability of the preference resource for a longer term. Notably, although SEPA proposed a ten-year term for the customers of the Kerr-Philpott projects, SEPA explained that ''contracts can be extended if acceptable by all parties.'' Nine years later, SEPA was encouraged to allow for contracts up to twenty years for the Georgia-Alabama-South Carolina (''GA–AL–SC'') system of projects. SEPA agreed explaining that providing for contracts for a term up to twenty years would ''give maximum flexibility in the negotiation of contracts under [the] policy and will allow for contracts to be entered into for a term of greater than ten years if necessary or if found desirable during contract negotiations.''

The most recent marketing policy for the GA–AL–SC system of projects provides the most recent approach for determining contract length. Many of the customers in the GA–AL–SC marketing area purchase power from SEPA under twenty-year contracts. SEPA should follow the same approach adopted in the GA–AL–SC marketing policy and provide for twenty-year contracts during negotiations on final contract terms. Similarly, SEPA should also include an evergreen clause to allow for renewal of the contract. This approach would track the sentiment expressed in the Kerr-Philpott marketing policy in which contracts should be renewed if acceptable to all parties.

Response: Southeastern agrees that providing for a contract term up to twenty years would give maximum flexibility in the negotiations under this policy and will allow for contracts to be entered into for a term greater than ten years if necessary or if found desirable during contract negotiations.

Changes or modifications in the Final Power Marketing Policy: It was determined to allow for contracts to be entered into for a period of time greater than ten years if necessary or if found desirable during contract negotiations (see comments 7 and 12).

The Resale Rates section has been eliminated and will be addressed in contract negotiations to ensure the ultimate customer is benefiting from the Federal Hydropower Program. The Florida Municipal Power Agency was added to the list of preference eligible customers given two of the municipalities they represent have allocations from the Jim Woodruff Project bringing the total to 53 preference eligible customers in the policy (see comment 8).

Final Power Marketing Policy

Jim Woodruff System Project

General: The project and power products subject to this policy are:

Name	Capacity (kw)	Average energy (MWh)	Energy attribute
Jim Woodruff Lock and Dam	36,000	193,530	Renewable Energy Certificate.

This Power Marketing Policy for electric power and energy not required in the operation of Jim Woodruff Lock and Dam will replace the arrangements in the contract between Duke Energy Florida and Southeastern Power Administration (Southeastern) dated July 19, 1957 (Rate Schedule No. 65), which provided for a fair and reasonable arrangement for the circumstances prevailing at the time the power was sold. Arrangements for the sale, purchase, wheeling and firming of power from the Jim Woodruff Lock and Dam will be implemented as soon as contract revisions pursuant to this policy can be negotiated.

The Final Marketing Policy will be implemented through negotiated contracts terms of approximately ten years but may be negotiated for terms of up to 20 years with consideration for extensions if acceptable to all parties during contract negotiations.

Deliveries will be made at the project bus-bar. The project will be hydraulically, electrically, and financially integrated as a single project system and will be operated to make maximum contribution to the respective utility areas. Preference in the sale of the power will be given to public bodies and cooperatives.

Marketing Area: Southeastern's marketing area shall be the entire state of Florida. The marketing area contains 53 eligible public bodies and cooperatives, as listed on Appendix A attached hereto.

Allocations of Power: It is Southeastern's goal to allocate all available and usable system power (that power remaining after provision for reserves and losses) to preference customers.

As to the power sold to the existing preference customers prior to contracts executed to implement this policy, each existing preference customer within the Duke Energy Florida service area will continue with its allocated share of the marketed capacity and resulting pro-rata share of the associated energy. Current capacity allocations are summarized below:

Talquin Elec Coop 13,500 kW
City of Quincy 8,400 kW
Tri County Elec Coop 5,200 kW
Suwannee Valley Elec Coop 4,800 kW
Central Florida Elec Coop 2,300 kW
City of Chattahoochee 1,800 kW

Southeastern does not expect any additional capacity or energy to be marketable from the project in the foreseeable future. However, both existing and preference-eligible customers will be eligible to share equitably in any capacity remaining after reductions for reserves, losses or capacity and energy relinquished by existing customers. Allocations of any newly available power and energy to a particular preference customer will be based on the relationship of such customer's maximum 2020 demand to the sum of the 2020 maximum demands of all preference customers sharing such power so long as such customer demand is expected to be and will be treated hereunder in each month as not less than 500 kW. Southeastern recognizes that West Florida Electric Cooperative Association Incorporated was previously included in Jim Woodruff allocations but is now served by Southeastern's GA–AL–SC system. For allocation purposes, they will be treated as if they are a preference-eligible customer.

There will be times when hydraulic conditions reduce the operating head or the available streamflow of the project and not all the allocated capacity can be made available. The power available from the project shall be reduced, pro-rata based on project capability.

Renewable Energy Certificates (RECs): Southeastern has included a process for REC distribution in this marketing policy. The REC distribution process will not impact power allocation within the System marketing area.

The M–RETS Tracking System creates and tracks certificates reporting generation attributes, by generating unit, for each megawatt-hour (MWh) of energy produced by registered generators. The System project is registered within M–RETS. The RECs potentially satisfy Renewable Portfolio Standards, state policies, and other regulatory or voluntary clean energy standards in a number of states. Southeastern has subscribed to M–RETS and has an account in which RECs are collected and tracked for each MWh of energy produced from the System. Within M–RETS, certificates can be transferred to other M–RETS subscribers or to a third-party tracking system. M–RETS creates a REC for every MWh of renewable energy produced, tracks the life cycle of each REC created, and ensures against any double counting or double-use of each REC.

REC Distribution: M–RETS (or a successor application) will be the transfer mechanism for all RECs related to the System. Southeastern shall maintain an account with M–RETS and collect RECs from the generation at the System project. Southeastern will verify the total amount of RECs each month. Preference Customers with an allocation of power from the System are eligible to receive RECs by transfer from Southeastern's M–RETS account to their M–RETS account or that of their agent. Transfers to each customer will be based on the customer's monthly invoices during the same three-month period (quarter). All RECs distributed by Southeastern shall be transferred within forty-five days of the end of a quarter. Each customer must submit to Southeastern, by the tenth business day after the quarter, any notice of change to M–RETS account or agent. Any REC transfers that were not claimed, or if a transfer account was not provided to Southeastern, will be forfeited if they become nontransferable as described in the M–RETS terms of service, procedures, policies, or definitions of reporting and trading periods, or any subsequent rules and procedures for transfers as established. The initial transfer process in M–RETS will be accomplished by the sixtieth day after the end of the first completed quarter subsequent to publication of the final policy.

Any balance of RECs that exist in Southeastern's M–RETS account, other than the first quarter after policy revision publication, may also be transferred to Preference Customers according to the customer's invoiced energy at the time of the REC creation.

Rates: No rates shall be established by Southeastern for RECs transferred to Preference Customers. Any cost to Southeastern, such as the M–RETS subscription, will be incorporated into marketing costs and included in recovery through the energy and capacity rates of the System.

Utilization at Utility Systems: In the absence of transmission facilities of its own, Southeastern may use area generation and transmission systems as may be necessary to dispose of system power under reasonable and acceptable marketing arrangements. Utility systems providing such services shall be entitled to adequate compensation.

Wholesale Rates: Rate schedules shall be drawn to recover all costs associated with producing and transmitting the power in accordance with then current repayment criteria. Production costs will be determined on a system basis and rate schedules will be related to the integrated output of the project. Rates schedules may be revised periodically.

Conservation Measures: Each customer purchasing Southeastern's power shall agree to take reasonable measures to encourage the conservation of energy by ultimate consumers.

Legal Authority

The policy is developed under authority of Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, and Section 302(a) of the Department of Energy Organization Act of 1977, 42 U.S.C. 7152. This power marketing policy was developed in accordance with the Procedure for Public Participation in the Formulation of Marketing Policy published July 6, 1978, 43 FR 29186.

Environmental Impact

Southeastern has determined this action fits within the following categorical exclusions listed in appendix B to subpart D of 10 CFR 1021: B4.1 (Contracts, policies, and marketing and allocation plans for electric power). Categorically excluded projects and activities do not require

preparation of either an environmental impact statement or an environmental assessment.

Determination Under Executive Order 12866

Southeastern has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Signing Authority

This document of the Department of Energy was signed on October 11, 2023, by Virgil G. Hobbs III, Administrator, Southeastern Power Administration, 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 25, 2023.

Treena V. Garrett,

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

Appendix A: Preference-Eligible Customers

Municipals	2020 Peak load MW
Alachua	28
Bartow	60
Blountstown	8
Bushnell	6
Chattahoochee	6
Clewiston	22
Florida Municipal Power Agency	1,512
Fort Meade	10
Fort Pierce	113
Gainesville	410
Green Cove Springs	24
Havana	7
Homestead Energy Services	115
JEA formerly Jacksonville Electric Authority	2,658
Jacksonville Beach dba Beaches Energy Services	168
Keys Energy Services formerly Key West	145
Kissimmee	374
Lake Worth Beach	96
Lakeland Electric	667
Leesburg	118
Moore Haven	4
Mount Dora	23
New Smyrna Beach	105
Newberry	9
Ocala	314
Orlando	1,294
Quincy	28
Reedy Creek Utilities	166
St. Cloud	186
Starke	16
Tallahassee	616
Vero Beach	180
Wauchula	14
Williston	8
Winter Park	94

Cooperatives	2020 Peak load MW
Central Florida Electric Cooperative	131
Choctawhatchee Electric Cooperative (CHELCO)	219
Clay Electric Cooperative	788
Escambia River Electric Cooperative	43
Glades Electric Cooperative	60
Gulf Coast Electric Cooperative	86
Lee County Electric Cooperative	970
Okefenoke Electric Cooperative	178
Peace River Electric Cooperative	205
PowerSouth Energy Cooperative (G&T)	2,027
SECO Energy (Sumter Electric Coop)	865
Suwannee Valley Electric Cooperative	119
Talquin Electric Cooperative	213
Tri-County Electric Cooperative	60
West Florida Electric Cooperative	123
Withlacoochee Electric Cooperative	1,002
Florida Keys Electric Cooperative	156
Seminole Electric Cooperative (G&T)	3,409

[FR Doc. 2023–23906 Filed 10–27–23; 8:45 a.m.]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R08–SFUND–2023–0488; FRL–11438–01–R8]

Administrative Settlement Agreement, Commodore Mining Company, Del Monte Mining Company, Kanawha Mines, LLC, Settling Parties, Mineral County, Colorado, Purchaser

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed agreement; request for public comment.

SUMMARY: Notice is hereby given by the U.S. Environmental Protection Agency (EPA), Region 8, of an Administrative Settlement Agreement between the United States on behalf of the EPA, the State of Colorado, Commodore Mining Company, Del Monte Mining Company, Kanawha Mines, LLC, and Mineral County, Colorado (collectively ''Parties''), at the Nelson Tunnel/Commodore Waste Rock Superfund Site in Mineral County, Colorado. The settlement provides that settling Parties will transfer certain mining claims to purchaser, which will in turn support purchaser's efforts to preserve the important historical structures on these mining claims. The Parties acknowledge that this settlement is structured to support purchaser's efforts to stabilize and preserve the historical structures. In exchange, this settlement resolves the settling Parties' alleged civil liability for the site. In exchange, this settlement also resolves purchaser's potential CERCLA liability.

DATES: Comments must be submitted on or before November 29, 2023.

ADDRESSES: The proposed agreement and additional background information relating to the agreement will be available upon request and will be posted at *https://www.epa.gov/superfund/nelson-tunnel.* Comments and requests for an electronic copy of the proposed agreement should be addressed to Natalie Timmons, Enforcement Specialist, Superfund and Emergency Management Division, Environmental Protection Agency—Region 8, Mail Code 8SEM–PAC, 1595 Wynkoop Street, Denver, Colorado 80202, telephone number: (303) 312–6385 or email address: *timmons.natalie@epa.gov* and should reference the Nelson Tunnel/Commodore Waste Rock Superfund Site.

You may also send comments, identified by Docket ID No. EPA–R08–SFUND–2023–0488 to *https://www.regulations.gov.* Follow the online instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Erin Agee, Assistant Regional Counsel, Office of Regional Counsel, Environmental Protection Agency, Region 8, Mail Code 8 ORC–LEC, 1595 Wynkoop, Denver, Colorado 80202, telephone number: (303) 312–6374, email address: *agee.erin@epa.gov.*

SUPPLEMENTARY INFORMATION: For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the agreement. The Agency will consider all comments received and may modify or withdraw its consent to the agreement if comments received disclose facts or considerations that indicate that the agreement is inappropriate, improper, or inadequate.

Ben Bielenberg,

Acting Division Director, Superfund and Emergency Management Division, Region 8.

[FR Doc. 2023–23804 Filed 10–27–23; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2022–0194; FRL–11374–02–OCSPP]

Pesticide Registration Review: Pesticide Dockets Opened for Review and Comment; Notice of Availability; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA issued a notice in the **Federal Register** of October 18, 2023, announcing the availability of preliminary work plans (PWPs) for the following chemicals: *Aureobasidium pullulans* and cyflumetofen. EPA mistakenly included cyflumetofen in the list of chemicals with available PWPs. This document corrects that error by deleting cyflumetofen from the list.

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

Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

II. Correction

In the **Federal Register** of October 18, 2023, in FR Doc. 2023–22996, on pages 71853 and 71854 (Table 1), EPA mistakenly included cyflumetofen in the list of registration review cases with PWPs that are available for public comment. EPA will make the cyflumetofen PWP available for public comment at a later date and will announce its release in a future **Federal Register** notice.

Authority: 7 U.S.C. 136 *et seq.*

Dated: October 24, 2023.

Mary Elissa Reaves,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2023–23920 Filed 10–27–23; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID: 181592]

Privacy Act of 1974; System of Records

AGENCY: Federal Communications Commission.

ACTION: Notice of a modified system of records.

SUMMARY: The Federal Communications Commission (FCC or Commission or Agency) has modified an existing system of records, FCC/OMD–17, Freedom of Information Act (FOIA) and Privacy Act Requests, subject to the Privacy Act of 1974, as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the agency. The FCC's Office of the Managing Director (OMD) will use the FCC FOIA Case Management Solution, an online portal, to accept, manage, and track Freedom of Information Act (FOIA) requests and appeals, and manage and track Privacy Act requests and appeals through their

lifecycles. The FCC FOIA Case Management Solution permits members of the public to file and appeal FOIA requests and to search various fields of data (as designated by the FCC) concerning requests, appeals, and responsive records. The FCC FOIA Case Management Solution is not usable by members of the public to file and appeal Privacy Act requests, but the FCC uses it to manage and track such requests and appeals that the agency receives through other channels. The FCC began transitioning from FOIAonline, its prior FOIA and Privacy Act case management system, to the FCC FOIA Case Management Solution in October 2023.

DATES: This modified system of records will become effective on October 30, 2023. Written comments on the routine uses are due by November 29, 2023. The routine uses in this action will become effective on November 29, 2023 unless comments are received that require a contrary determination.

ADDRESSES: Send comments to Brendan McTaggart, Attorney-Advisor, Office of General Counsel, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, or to *privacy@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Brendan McTaggart, (202) 418–1738, or *privacy@fcc.gov* (and to obtain a copy of the Narrative Statement and the Supplementary Document, which includes details of the modifications to this system of records).

SUPPLEMENTARY INFORMATION: This notice serves to update and modify FCC/OMD–17, Freedom of Information Act (FOIA) and Privacy Act Requests, as a result of various necessary changes and updates. The substantive changes and modifications to the previously published version of the FCC/OMD–17 system of records include:

1. Updating references throughout to reflect the FCC's transition from the FOIAonline case management system to the FCC FOIA Case Management Solution;

2. Updating and/or revising language in the following routine uses (listed by routine use number provided in this notice): (1) Public Access; (3) Litigation and (4) Adjudication (formerly a single routine use); (5) Law Enforcement and Investigation; (6) Congressional Inquiries; (7) Government-wide Program Management and Oversight; (9) Breach Notification, the revision of which is as required by OMB Memorandum No. M–17–12; and (11) Non-Federal Personnel; and

3. Adding one new routine use: (10) Assistance to Federal Agencies and Entities Related to Breaches, the addition of which is required by OMB Memorandum No. M–17–12.

The system of records is also revised for clarity and updated to reflect various administrative changes related to the system managers and system addresses; policy and practices for storage and retrieval of the information; administrative, technical, and physical safeguards; and updated notification, records access, and contesting records procedures.

SYSTEM NAME AND NUMBER:

FCC/OMD–17, Freedom of Information Act (FOIA) and Privacy Act Requests.

SECURITY CLASSIFICATION:

No information in the system is classified.

SYSTEM LOCATION:

Office of the Managing Director (OMD), Federal Communications Commission (FCC), 45 L Street NE, Washington, DC 20554.

SYSTEM MANAGER(S):

Office of the Managing Director (OMD), Federal Communications Commission (FCC), 45 L Street NE, Washington, DC 20554.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552 and 5 U.S.C. 552a.

PURPOSE(S) OF THE SYSTEM:

The Commission's Performance & Program Management (PPM) staff of the Office of Managing Director will collect and maintain the information in this system primarily through the FCC FOIA Case Management Solution, an online portal for filing, managing, and tracking FOIA requests and appeals and managing and tracking Privacy Act requests and appeals. Maintaining these records permits the Commission to effectively, efficiently, and appropriately process and respond to such requests and appeals. These records are also necessary for defending Commission action in litigation challenging FOIA and Privacy Act responses by the agency; for compiling mandatory reports and responses to inquiries from Congress, the Department of Justice (DOJ), the Office of Government Information Services (OGIS) of the National Archives and Records Administration (NARA), the Office of Management and Budget (OMB), the General Services Administration (GSA), and the Government Accountability Office (GAO). The records are also used to respond to congressional inquiries from both Congressional committees and from individual members of Congress inquiring on behalf of a constituent.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals covered by this system include, but are not limited to individuals who submit FOIA and Privacy Act requests, or administrative appeals; FCC staff who respond to FOIA and Privacy Act requests and appeals; and individuals who are the subject of FOIA and Privacy Act requests and appeals or whose personally identifiable information is contained in records covered by this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in this system include identifying information provided by FOIA and Privacy Act requesters when making FOIA or Privacy Act requests or appeals, including requesters' names, home addresses, email addresses, and telephone numbers, as well as other identifying information that may be provided by requesters in the description of their FOIA or Privacy Act requests or appeals; and the names of certain FCC staff responding to FOIA and Privacy Act requests and appeals. This system does not include any records of internal communications between FCC staff, nor any communications between the FCC and other federal agencies, nor does it contain draft correspondence to requesters or folders of documents that are responsive or potentially responsive to FOIA and Privacy Act requests.

RECORD SOURCE CATEGORIES:

The sources for information in this system are FOIA and Privacy requesters; attorneys or other representatives of the requesters and the subjects of the requests; and FCC staff responding to FOIA and Privacy Act requests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside the FCC as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows. In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose(s) for which the records were collected:

1. Public Access—The FCC provides public access to FOIA requests and

appeals through the FCC FOIA Case Management Solution, limited to the names of FOIA requesters, dates related to the processing of the request, and a description of the records sought by the requester (excluding any other personally identifiable information contained in the description of the records request, such as telephone numbers, home or email addresses, and Social Security Numbers). The information that will routinely be made public also may be used to create a publicly available log of requests.

2. Determinations on Access—To assist the FCC in making an access determination, a record from the system may be shared with (a) the person or entity that originally submitted the record to the agency or is the subject of the record or information; or (b) another Federal entity.

3. Litigation—To disclose records to DOJ when: (a) the FCC or any component thereof; (b) any employee of the FCC in his or her official capacity; (c) any employee of the FCC in his or her individual capacity where the DOJ or the FCC has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation, and the use of such records by the DOJ is for a purpose that is compatible with the purpose for which the FCC collected the records.

4. Adjudication—To disclose records in a proceeding before a court or adjudicative body, when: (a) the FCC or any component thereof; or (b) any employee of the FCC in his or her official capacity; or (c) any employee of the FCC in his or her individual capacity; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation, and that the use of such records is for a purpose that is compatible with the purpose for which the agency collected the records.

5. Law Enforcement and Investigation—When the FCC becomes aware of an indication of a violation or potential violation of a civil or criminal statute, law, regulation, order, or other requirement, to disclose pertinent information to appropriate Federal, State, local, Tribal, international, or multinational agencies, or a component of such an agency, responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or other requirement.

6. Congressional Inquiries—To provide information to a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the written request of that individual.

7. Government-wide Program Management and Oversight—To provide information to DOJ to obtain that department's advice regarding disclosure obligations under the FOIA; or to OMB to obtain that office's advice regarding obligations under the Privacy Act.

8. National Archives and Records Administration—To the National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures, and compliance with the FOIA, and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

9. Breach Notification—To appropriate agencies, entities, and persons when: (a) The Commission suspects or has confirmed that there has been a breach of the system of records; (b) the Commission has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Commission (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

10. Assistance to Federal Agencies and Entities Related to Breaches—To another Federal agency or Federal entity, when the Commission determines that information from this system is reasonably necessary to assist the recipient agency or entity in: (a) Responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, program, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

11. For Non-Federal Personnel—To disclose information to non-Federal personnel, including contractors, other vendors (*e.g.,* identity verification services), grantees, and volunteers who have been engaged to assist the FCC in the performance of a contract service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Information in this system includes both paper and electronic records. The paper records, documents, and files are maintained in file cabinets that are located in the OMD FOIA Public Liaison's office suite, the OMD central file room, the Office of General Counsel, and in the bureaus and offices of the FCC staff who provide the responses to FOIA/Privacy Act requests. Paper files are kept locked and access to the file room is restricted. FOIA and Privacy Act requests that are received via postal mail are scanned and are stored as electronic records by the OMD FOIA office. The electronic records, files, and data are stored in the FCC FOIA Case Management Solution and in the FCC's or a vendor's computer network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system of records are most often retrieved by the control number for the request, but may be retrieved by an individual's name, organization, or request description.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of in accordance with the National Archives and Records Administration's General Records Schedule 4.2, Items 020, 040, 050, 070, and 090.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The electronic records, files, and data are stored within FCC or a vendor's accreditation boundaries and maintained in a database housed in the FCC's or vendor's computer network databases. Access to the electronic files is restricted to authorized employees and contractors; and to IT staff, contractors, and vendors who maintain the IT networks and services. Other employees and contractors may be granted access on a need-to-know basis. The electronic files and records are protected by the FCC and third-party privacy safeguards, a comprehensive and dynamic set of IT safety and security protocols and features that are designed to meet all Federal privacy standards, including those required by the Federal Information Security Modernization Act of 2014 (FISMA), OMB, and the National Institute of Standards and Technology (NIST).

Paper records in this system are maintained in file cabinets in the FOIA Public Liaison's office, in the Office of

General Counsel, and in the bureaus and offices of the FCC staff who provide the responses to FOIA/Privacy Act requests. The file cabinets are locked at the end of the business day and access is restricted to authorized supervisors and staff who are responsible for responding to the FOIA or Privacy Act requests or appeals.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to and/or amendment of records about themselves should follow the Notification Procedures below.

CONTESTING RECORD PROCEDURES:

Individuals wishing to contest information pertaining to him or her in the system of records should follow the Notification Procedures below.

NOTIFICATION PROCEDURES:

Individuals wishing to determine whether this system of records contains information about themselves may do so by writing to *privacy@fcc.gov.* Individuals requesting record access or amendment must also comply with the FCC's Privacy Act regulations regarding verification of identity as required under 47 CFR part 0, subpart E.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

81 FR 58930 (August 26, 2016).

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2023–23904 Filed 10–27–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0848; FR ID 181525]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: 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; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written PRA comments should be submitted on or before December 29, 2023. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

OMB Control Number: 3060–0848.

Title: Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98–147.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 750 respondents; 9,270 responses.

Estimated Time per Response: 3.54 hours (average burden per response).

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in Sections 201 and 251 of the Communications Act of 1934, as amended, 47 U.S.C. 201, 251.

Total Annual Burden: 32,845 hours.

Total Annual Cost: No cost.

Needs and Uses: The information collection requirements implement sections 201 and 251 of the Communications Act of 1934, as amended, to provide for physical collocation on rates, terms and conditions that are just, reasonable and nondiscriminatory, and to promote deployment of advanced telecommunications services without significantly degrading the performance of other services. All of the requirements will be used by the Commission and competitive local exchange carriers (LECs) to facilitate the deployment of telecommunications services, including advanced telecommunications services.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–23879 Filed 10–27–23; 8:45 am]

BILLING CODE 6712–01–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 27, 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. *1864 Bancorp, MHC, and 1864 Bancorp, Inc., both of South Easton, Massachusetts;* to become bank holding companies by acquiring all of the voting shares of North Easton Savings Bank, South Easton, Massachusetts.

B. Federal Reserve Bank of Dallas (Karen Smith, Director, Mergers & Acquisitions) 2200 North Pearl Street, Dallas, Texas 75201–2272. Comments can also be sent electronically to *Comments.applications@dal.frb.org:*

1. *The 2013 Monte Hulse Family Irrevocable Trust I, Waco, Texas;* to acquire up to 30 percent of the voting shares of FCT Bancshares, Inc., Waco, Texas, and thereby indirectly acquire voting shares of First National Bank of Central Texas, Waco, Texas.

C. Federal Reserve Bank of San Francisco (Joseph Cuenco, Assistant Vice President, Formations, Transactions & Enforcement) 101 Market Street, San Francisco, California 94105. Comments can also be sent electronically to: *sf.fisc.comments.applications@sf.frb.org.*

1. *WAFD, Inc., Seattle, Washington;* to acquire Luther Burbank Corporation, and thereby indirectly acquire Luther Burbank Savings, both of Santa Rosa, California.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–23912 Filed 10–27–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2022–0023]

FEDERAL RESERVE SYSTEM

[Docket No. OP–1793]

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–ZA32

Principles for Climate-Related Financial Risk Management for Large Financial Institutions

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Final interagency guidance.

SUMMARY: The OCC, Board, and FDIC (together, the agencies) are jointly issuing principles that provide a high-level framework for the safe and sound management of exposures to climate-related financial risks (principles). Although all financial institutions, regardless of size, may have material exposures to climate-related financial risks, these principles are intended for the largest financial institutions, those with over $100 billion in total consolidated assets. The principles are intended to support efforts by large financial institutions to focus on key aspects of climate-related financial risk management.

DATES: The final interagency guidance is available on October 30, 2023.

FOR FURTHER INFORMATION CONTACT:

OCC: Tamara Culler, Director for Governance and Operational Risk Policy, Bank Supervision Policy, at (202) 649–6670, Russell D'Costa, Program Analyst, Office of Climate Risk, at (202) 649–8283, or Alison MacDonald, Senior Counsel, Chief Counsel's Office, at (202) 649–5490, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

Board: Anna Lee Hewko, Associate Director, (202) 530–6260; Morgan Lewis, Manager, (202) 452–2000; or Matthew McQueeney, Senior Financial Institution Policy Analyst II, (202) 452–2942 Division of Banking Supervision and Regulation; or Asad Kudiya, Assistant General Counsel, (202) 475–6358; Flora Ahn, Senior Special Counsel, (202) 452–2317; Matthew Suntag, Senior Counsel, (202) 452–3694; Katherine Di Lucido, Attorney, (202) 452–2352; or David Imhoff, Attorney, (202) 452–2249, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For the hearing impaired and users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

FDIC: Andrew D. Carayiannis, Chief, Policy and Risk Analytics Section, *acarayiannis@fdic.gov;* Lauren K. Brown, Senior Policy Analyst, Exam Support Section, *laubrown@fdic.gov;* Amy L. Beck, Corporate Expert, Sustainable Finance, *ambeck@fdic.gov;* Capital Markets and Accounting Policy, Division of Risk Management Supervision, 202–898–6888; Jennifer M. Jones, Counsel, *jennjones@fdic.gov;* Karlyn Hunter, Counsel, *kahunter@fdic.gov;* Amanda Ledig, Senior Attorney, *aledig@fdic.gov;* Supervision, Legislation, and Enforcement Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

On December 16, 2021, the OCC issued draft Principles for Climate-Related Financial Risk Management for Large Banks (OCC draft principles) and requested feedback from the public with comments due on February 14, 2022.[1] On April 4, 2022, the FDIC issued a Request for Comment on a Statement of Principles for Climate-Related Financial Risk Management for Large Financial Institutions (FDIC draft principles) with comments due on June 3, 2022.[2] On December 2, 2022, the Board issued draft Principles for Climate-Related Financial Risk Management for Large Financial Institutions (Board draft principles) with comments due on February 6, 2023.[3]

Financial institutions are likely to be affected by both the physical risks and transition risks associated with climate change (collectively, climate-related financial risks).[4] Weaknesses in how financial institutions identify, measure, monitor, and control climate-related financial risks could adversely affect financial institutions' safety and soundness. The proposed OCC draft principles, FDIC draft principles, and Board draft principles (collectively, draft principles) were substantively similar and proposed a high-level framework for the safe and sound management of exposures to climate-related financial risks, consistent with the risk management framework described in the agencies' existing rules and guidance. Although all financial institutions, regardless of size, may have material exposures to climate-related

[1] OCC Bulletin 2021–62, Risk Management: Principles for Climate-Related Financial Risk Management for Large Banks; Request for Feedback, (December 16, 2021), *https://occ.gov/news-issuances/bulletins/2021/bulletin-2021-62.html.*

[2] 87 FR 19507 (April 4, 2022).

[3] 87 FR 75267 (December 8, 2022).

[4] Physical risks refer to the harm to people and property arising from acute, climate-related events, such as hurricanes, wildfires, floods, and heatwaves, and chronic shifts in climate, including higher average temperatures, changes in precipitation patterns, sea level rise, and ocean acidification. Transition risks refer to stresses to institutions or sectors arising from the shifts in policy, consumer and business sentiment, or technologies associated with the changes that would be part of a transition to a lower carbon economy.

financial risks, the draft principles were intended to support key climate-related financial risk management efforts by the largest financial institutions, those with over $100 billion in total consolidated assets.

The agencies seek to promote consistency in their climate-related financial risk management guidance. Accordingly, following the issuance of the draft principles and collective review of comments received on each of the OCC draft principles, FDIC draft principles, and Board draft principles, the agencies are now jointly issuing final interagency Principles for Climate-Related Financial Risk Management for Large Financial Institutions (principles) that provide a high-level framework for the safe and sound management of exposures to climate-related financial risks.

II. Discussion of Public Comments

The OCC received nearly 100 unique comments on the OCC draft principles from individuals and organizations. Several of these letters were signed by or included individual feedback from multiple individuals or organizations (and in one case, more than 17,700 individuals). Approximately 4,470 individuals submitted a substantially similar letter directly to the OCC.

The FDIC received more than 70 unique comments on the FDIC draft principles from individuals and organizations. Several of the letters were submitted on behalf of, or signed by, numerous individuals and organizations.

The Board received more than 100 unique comments on the Board draft principles from individuals and organizations. Several of the letters were submitted on behalf of, or signed by, numerous individuals or organizations.

Commenters included financial services trade groups, individual banks, environmental groups, public interest and advocacy groups, data and risk model providers, governmental organizations, community groups, and individuals, among other respondents.

The agencies received a wide range of comments that both supported and opposed the finalization of the draft principles. Many commenters viewed the draft principles as an important step to support large financial institutions in managing climate-related financial risks. Other commenters asserted that financial institutions already effectively manage climate-related financial risks or do not face material climate-related financial risks. Some commenters expressed a view that the agencies were providing special treatment to climate-related financial risks relative to other risks. Many commenters indicated practices to address climate-related financial risks are evolving, and they supported the high-level and flexible nature of the draft principles, while others encouraged the agencies to take additional steps to address climate-related financial risks, including considering more detailed guidance. Most unique commenters offered suggestions for changes to the draft principles or requested additional guidance in specific areas. These comments are summarized below.

Authority. Some commenters asserted that the draft principles extend beyond the agencies' authority. Other commenters raised concerns that the draft principles would restrict or discourage provision of credit to, or otherwise disproportionately impact, certain industries, geographies, or other groups. Some commenters asserted that the draft principles could better address the role that they believe financial institutions should play in supporting or accelerating a transition to a lower carbon economy.

The agencies are responsible for ensuring the safety and soundness of supervised financial institutions, among other responsibilities. Similar to other risks faced by financial institutions, climate-related financial risks can affect financial institutions' safety and soundness. The principles are focused on ensuring that financial institutions understand and appropriately manage their material climate-related financial risks. The agencies are providing guidance to financial institutions through these principles on the management of climate-related financial risks just as the agencies provide guidance to financial institutions in identifying and managing other risks.

The agencies did not incorporate suggestions for changes to the draft principles that extend beyond the agencies' statutory mandates relating to safety and soundness. For example, the agencies did not incorporate changes in response to suggestions that the agencies promote a transition to a lower carbon economy. The agencies encourage financial institutions to take a risk-based approach in assessing the climate-related financial risks associated with their customer relationships and to take into account the financial institution's ability to manage the risk. The principles neither prohibit nor discourage financial institutions from providing banking services to customers of any specific class or type, as permitted by law or regulation. The decision regarding whether to make a loan or to open, close, or maintain an account rests with the financial institution, so long as the financial institution complies with applicable laws and regulations.

Scope. Some commenters supported draft principles that were intended for financial institutions with total assets over $100 billion. Other commenters proposed that the draft principles cover financial institutions of all sizes. Some requested that the draft principles be tailored to financial institutions based on the size, complexity, or risk profile of the financial institution. Several commenters noted that the agencies should implement a phased-in approach for smaller financial institutions. Other commenters expressed concern that the draft principles could unintentionally impact smaller financial institutions, including community banks, noting the potential burden the principles could impose on these smaller financial institutions.

Effective risk management practices should be appropriate to the size of the financial institution and the nature, scope, and risk of its activities. In keeping with the agencies' risk-based approach to supervision, the principles are intended for financial institutions with more than $100 billion in total consolidated assets. The principles are intended to provide guidance to large financial institutions as they develop strategies, deploy resources, and build capacity to identify, measure, monitor, and control for climate-related financial risks.

Several commenters requested clarification regarding the draft principles' application to foreign banking organizations and branches and agencies of foreign banks operating in the United States. The principles are intended for foreign banking organizations with combined United States operations of greater than $100 billion. The principles also are intended for any branch or agency of a foreign banking organization that individually has total assets of greater than $100 billion.[5]

Financial institutions' public climate commitments. Several commenters suggested that the draft principles should encourage or mandate financial institutions to develop plans to transition to a lower carbon economy, to adopt credible commitments to align their portfolios with net zero

[5] The Board is responsible for the overall supervision and regulation of the U.S. operations of all foreign banking organizations. The OCC, the FDIC, and the state banking authorities have supervisory authority over the national and state bank subsidiaries and federal and state branches and agencies of foreign banking organizations, respectively, in addition to the Board's supervisory and regulatory responsibilities over some of these entities.

greenhouse gas emissions by 2050, or to directly support their customers through such a transition. Some commenters asked the agencies to hold financial institutions accountable if financial institutions' public commitments to address climate change do not match their actions. Other commenters argued that the draft principles should recognize the aspirational nature of financial institutions' public commitments.

The agencies did not incorporate suggestions for changes to the draft principles that extend beyond the agencies' statutory mandate relating to safety and soundness, including changes in response to suggestions that the agencies promote a transition to a lower carbon economy. Similar to the draft principles, the principles state that any financial institutions' climate-related strategies should align with and support the institution's broader strategy, risk appetite, and risk management framework. In addition, when financial institutions engage in public communication of their climate-related strategies, boards of directors and management should confirm that any public statements about their financial institutions' climate-related strategies and commitments are consistent with their internal strategies, risk appetite statements, and risk management frameworks. This type of oversight is consistent with effective governance and risk management and intended to help financial institutions avoid legal and compliance risk.

Low-and-moderate-income (LMI) and other underserved consumers and communities. Many commenters asked that the agencies acknowledge the potential unintended consequences of financial institutions' climate risk management strategies on low-and-moderate-income and other underserved consumers and communities. Some commenters also requested additional clarification on how financial institutions may support communities that are disproportionately impacted by the effects of climate change, as well as additional guidance on how financial institutions can manage climate-related financial risks in a manner that minimizes adverse impacts on such consumers and communities. Some commenters also suggested that the principles should provide further guidance on how financial institutions can manage climate-related financial risks consistent with their obligations under fair lending and fair housing laws.

The agencies recognize that both the effects of climate change and the actions that financial institutions may take to manage climate-related financial risks could potentially have a disproportionate impact on LMI and other underserved consumers and communities. The agencies expect financial institutions to manage climate-related financial risks in a manner that will allow them to continue to prudently meet the financial services needs of their communities, including LMI and other underserved consumers and communities, and to ensure compliance with fair housing and fair lending laws. For example, the principles clarify that financial institutions should ensure that fair lending monitoring programs review whether and how the financial institution's risk mitigation measures potentially discriminate against consumers on a prohibited basis, such as race, color, or national origin.

Governance. Many commenters supported the flexibility provided by the draft principles for financial institutions to incorporate climate-related financial risks within existing organizational structures or to establish new structures for climate-related financial risks. Many commenters requested that the draft principles further distinguish between the responsibilities of the boards of directors and of management. Some commenters noted that expectations that financial institutions consider whether incorporation of climate-related financial risks into governance and risk management processes may warrant changes to compensation policies would be overly prescriptive.

The agencies have made changes to the draft principles to clarify the role of the boards of directors in overseeing the financial institution's risk-taking activities and the role of management in executing the strategic plan and risk management framework. The agencies emphasize that sound compensation programs continue to be important to promote sound risk management and to protect the safety and soundness of financial institutions. As the agencies have existing guidelines and guidance on compensation,[6] the principles do not include a specific discussion of compensation policies.

Materiality of risk. Several commenters requested further clarification of how financial institutions should determine whether climate-related financial risks are material. Some commenters requested clarification that financial institutions have the flexibility to make their own materiality determinations. Some commenters provided specific recommendations for assessing materiality. Some commenters requested that the agencies distinguish materiality in the context of the draft principles from the concept of materiality in securities laws. Other commenters asserted that climate-related financial risks are rarely or not material to the risk profile of financial institutions.

The principles provide that financial institutions' management should employ comprehensive processes for identifying climate-related financial risks consistent with methods used to identify other types of emerging and material risks. The agencies made changes to the draft principles to clarify that management should incorporate climate-related financial risks into their risk management frameworks where those risks are material.

Coordination. Many commenters urged the agencies to coordinate amongst each other and work with other U.S. and international regulators and federal agencies to harmonize approaches and to share knowledge with respect to climate-related financial risks.

The agencies agree with commenters that interagency coordination plays an important role in the effective issuance of guidance on climate-related financial risks. Accordingly, the agencies have jointly issued these principles and intend to continue to coordinate with other U.S. regulators and international counterparts, where appropriate.

Other comments. The agencies received a number of detailed comments on other aspects of the draft principles, some of which were responsive to specific questions posed in the draft principles. These comments included responses associated with supervisory approaches, time horizons for identifying the materiality of climate-related financial risks, relationships between climate-related financial risks and other risks, specific tools and resources used to manage and mitigate climate-related financial risks, approaches to scenario analysis, climate-related financial products offered by financial institutions, data- and modeling-related challenges, and reporting and disclosure issues. The responses also included feedback on how climate-related financial risks should be considered in merger and acquisition decisions and the challenges

[6] *See* 12 CFR part 30, appendix A and appendix D (OCC); 12 CFR part 364, appendix A (FDIC); 12 CFR part 208, appendix D–1 (Board); and Guidance on Sound Incentive Compensation Policies, 75 FR 36396 (June 25, 2010).

and costs of incorporating the principles into risk management frameworks.[7]

Comments received on the draft principles were considered in the development of the principles and will assist the agencies as they consider whether and how to provide additional guidance in the future.

III. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The principles do not revise any existing, or create any new, information collections pursuant to the PRA. Rather, any reporting, recordkeeping, or disclosure activities mentioned in the principles are usual and customary and should occur in the normal course of business as defined in the PRA.[8] Consequently, no submissions will be made to the OMB for review.

IV. Principles for Climate-Related Financial Risk for Large Financial Institutions

The financial impacts that result from the economic effects of climate change and the transition to a lower carbon economy pose an emerging risk to the safety and soundness of financial institutions [9] and the financial stability of the United States. Financial institutions are likely to be affected by both the physical risks and transition risks associated with climate change (collectively, climate-related financial risks). Physical risks refer to the harm to people and property arising from acute, climate-related events, such as hurricanes, wildfires, floods, and heatwaves, and chronic shifts in climate, including higher average temperatures, changes in precipitation patterns, sea level rise, and ocean acidification.[10] Transition risks refer to stresses to institutions or sectors arising from the shifts in policy, consumer and business sentiment, or technologies associated with the changes that would be part of a transition to a lower carbon economy.[11]

Physical and transition risks associated with climate change could affect households, communities, businesses, and governments—damaging property, impeding business activity, affecting income, and altering the value of assets and liabilities. These risks may be propagated throughout the economy and financial system. As a result, the financial sector may experience credit and market risks associated with loss of income, defaults, and changes in the values of assets, liquidity risks associated with changing demand for liquidity, operational risks associated with disruptions to infrastructure or other channels, or legal risks.[12]

Weaknesses in how a financial institution identifies, measures, monitors, and controls the physical and transition risks associated with a changing climate could adversely affect a financial institution's safety and soundness. The adverse effects of climate change could also include a potentially disproportionate impact on the financially vulnerable, including low-and-moderate-income (LMI) and other underserved consumers and communities.[13]

These principles provide a high-level framework for the safe and sound management of exposures to climate-related financial risks, consistent with the risk management frameworks described in the agencies' existing rules and guidance.

The principles are intended to support efforts by financial institutions to focus on key aspects of climate-related financial risk management. The principles are designed to help financial institutions' boards of directors (boards) and management make progress toward incorporating climate-related financial risks into risk management frameworks in a manner consistent with safe and sound practices. The principles are intended to explain and supplement existing risk management standards and guidance on the role of boards and management.[14]

Although all financial institutions, regardless of size, may have material exposures to climate-related financial risks, these principles are intended for the largest financial institutions, those with over $100 billion in total consolidated assets.[15] Effective risk management practices should be appropriate to the size of the financial institution and the nature, scope, and risk of its activities. In keeping with the agencies' risk-based approach to supervision, the agencies anticipate that differences in large financial institutions' complexity of operations and business models will result in different approaches to addressing climate-related financial risks. Some large financial institutions are already

[7] Some commenters also asserted that the draft principles were legislative rules subject to Administrative Procedure Act (APA) notice and comment requirements and that the draft principles violated the agencies' rule on guidance. The principles are being issued as guidance and, consistent with the agencies' rule on guidance, they will not have the force and effect of law. They do not establish any specific requirements applicable to financial institutions. Moreover, the principles are not subject to APA notice and comment requirements. 5 U.S.C. 533(b) (excluding interpretive rules, general statements of policy, and rules of agency organization, procedures, or practice from the notice and comment requirement). That the agencies sought public comment on the draft principles does not mean that the principles are intended to be a regulation or to have the force and effect of law. Rather, the comment process helps the agencies improve their understanding of the issue, gather information on financial institutions' risk management practices, or seek ways to achieve supervisory objectives most effectively and with the least burden on financial institutions.

[8] 5 CFR 1320.3(b)(2).

[9] In this issuance, the term ''financial institution'' or ''institution'' includes national banks, Federal savings associations, U.S. branches and agencies of foreign banks, state nonmember banks, state savings associations, state member banks, bank holding companies, savings and loan holding companies, intermediate holding companies, foreign banking organizations with respect to their U.S. operations, and non-bank systemically important financial institutions (SIFIs) supervised by the Board.

[10] The Financial Stability Oversight Council has described the impacts of physical risks as follows: ''The intensity and frequency of extreme weather and climate-related disaster events are increasing and already imposing substantial economic costs. Such costs to the economy are expected to increase further as the cumulative impacts of past and ongoing global emissions continue to drive rising global temperatures and related climate changes, leading to increased climate-related risks to the financial system.'' *Report on Climate-Related Financial Risk,* Financial Stability Oversight Council, page 10 (Oct. 21, 2021) (FSOC Climate Report), available at *https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf.*

[11] The Financial Stability Oversight Council has described the impacts of transition risks as: ''. . . [Changing] public policy, adoption of new technologies, and shifting consumer and investor preferences have the potential to impact the allocation of capital . . . . If these changes occur in a disorderly way owing to substantial delays in action or abrupt changes in policy, their impact on firms, market participants, individuals, and communities is likely to be more sudden and disruptive.'' FSOC Climate Report, page 13.

[12] FSOC Climate Report, page 13.

[13] For further information, *see* Staff Reports, Federal Reserve Bank of New York, *Understanding the Linkages between Climate Change and Inequality in the United States,* No. 991 (Nov. 2021), available at *https://www.newyorkfed.org/research/staff_reports/sr991.html.*

[14] References to the board and management throughout these principles should be understood in accordance with their respective roles and responsibilities and is not intended to conflict with existing guidance regarding the roles of board and management or advocate for a specific board structure. *See, e.g.,* SR 21–3/CA 21–1: Supervisory Guidance on Board of Directors' Effectiveness (Feb. 26, 2021), *https://www.federalreserve.gov/supervisionreg/srletters/SR2103.htm;* OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches, 12 CFR part 30, appendix D.

[15] The principles are intended for financial institutions with over $100 billion in total consolidated assets. With respect to foreign banking organizations, this includes organizations with combined United States operations of greater than $100 billion. The principles also are intended for any branch or agency of a foreign banking organization that individually has total assets of greater than $100 billion.

developing governance structures, processes, and analytical methodologies to identify, measure, monitor, and control for these risks. The agencies understand that expertise in climate risk and the incorporation of climate-related financial risks into risk management frameworks remain under development in many large financial institutions and will continue to evolve over time. The agencies also recognize that the incorporation of material climate-related financial risks into various planning processes will be iterative, as measurement methodologies, models, and data for analyzing these risks continue to mature. The agencies encourage large financial institutions to take a risk-based approach in assessing the climate-related financial risks associated with individual customer relationships and to take into account the financial institution's ability to manage the risk. The principles neither prohibit nor discourage financial institutions from providing banking services to customers of any specific class or type, as permitted by law or regulation. The decision regarding whether to make a loan or to open, close, or maintain an account rests with the financial institution, so long as the financial institution complies with applicable laws and regulations.

The principles are intended to promote a consistent understanding of the effective management of climate-related financial risks. The agencies may consider providing additional resources or guidance, as appropriate, to support financial institutions in prudently managing these risks while continuing to meet the financial services needs of their communities.

General Principles

Governance. An effective risk management framework is essential to a financial institution's safe and sound operation. A financial institution's board should understand the effects of climate-related financial risks on the financial institution in order to oversee management's implementation of the institution's business strategy, risk management, and risk appetite. The board should oversee the financial institution's risk-taking activities, hold management accountable for adhering to the risk management framework, and allocate appropriate resources to support climate-related financial risk management. The board should direct management to provide timely, accurate, and well-organized information to permit the board to oversee the measurement and management of climate-related financial risks to the financial institution. The board should acquire sufficient information to understand the implications of climate-related financial risks across various scenarios and planning horizons, which may include those that extend beyond the financial institution's typical strategic planning horizon. If weaknesses or gaps in climate-related financial risk management are identified, the information provided is incomplete, or as otherwise warranted, the board should challenge management's assessments and recommendations. The board and management should support the stature and independence of the financial institution's risk management and internal audit functions and, in their respective roles, assign accountability for climate-related financial risks within existing organizational structures or establish new structures for climate-related financial risks.

Management is responsible for implementing the financial institution's policies in accordance with the board's strategic direction and for executing the financial institution's overall strategic plan and risk management framework. This responsibility includes assuring that there is sufficient expertise to execute the strategic plan and effectively managing all risks, including climate-related financial risks. This also includes management's responsibility to oversee the development and implementation of processes to identify, measure, monitor, and control climate-related financial risks within the financial institution's existing risk management framework. Management should also hold staff accountable for controlling risks within established lines of authority and responsibility. Management is responsible for regularly reporting to the board on the level and nature of risks to the financial institution, including material climate-related financial risks. Management should provide the board with sufficient information for the board to understand the impacts of material climate-related financial risks to the financial institution's risk profile and make sound, well-informed decisions. Where dedicated climate risk organizational structures are established by the board, management should clearly define these units' responsibilities and interaction with existing governance structures.

Policies, Procedures, and Limits. Management should incorporate material climate-related financial risks into policies, procedures, and limits to provide detailed guidance on the financial institution's approach to these risks in line with the strategy and risk appetite set by the board. Policies, procedures, and limits should be modified when necessary to reflect: (i) the distinctive characteristics of climate-related financial risks, such as the potentially longer time horizon and forward-looking nature of the risks; and (ii) changes to the financial institution's operating environment or activities.

Strategic Planning. The board should consider material climate-related financial risk exposures when setting and monitoring the financial institution's overall business strategy, risk appetite, and when overseeing management's implementation of capital plans. As part of forward-looking strategic planning, the board should consider and management should address the potential impact of material climate-related financial risk exposures on the financial institution's financial condition, operations (including geographic locations), and business objectives over various time horizons. The board should encourage management to consider climate-related financial risk impacts on the financial institution's other operational and legal risks. Additionally, the board should encourage management to consider the impact that the financial institution's strategies to mitigate climate-related financial risks could have on LMI and other underserved communities and their access to financial products and services, consistent with the financial institution's obligations under applicable consumer protection laws.

Any climate-related strategies and commitments should align with and support the financial institution's broader strategy, risk appetite, and risk management framework. In addition, where financial institutions engage in public communication of their climate-related strategies, boards and management should assure that any public statements about their institutions' climate-related strategies and commitments are consistent with their internal strategies, risk appetite statements, and risk management frameworks.

Risk Management. Climate-related financial risks can impact financial institutions through a range of traditional risk types. Management should oversee the development and implementation of processes to identify, measure, monitor, and control exposures to climate-related financial risks within the financial institution's existing risk management framework. Financial institutions with sound risk management employ a comprehensive process to identify emerging and material risks related to the financial institution's business activities. The risk identification process should include

input from stakeholders across the organization with relevant expertise (*e.g.,* business units, independent risk management, internal audit, and legal). Risk identification includes assessment of climate-related financial risks across a range of plausible scenarios and under various time horizons.

As part of sound risk management, management should develop processes to measure and monitor material climate-related financial risks and to communicate and report the materiality of those risks to internal stakeholders. Material climate-related financial risk exposures should be clearly defined, aligned with the financial institution's risk appetite, and supported by appropriate metrics (*e.g.,* risk limits and key risk indicators) and escalation processes. Management should incorporate material climate-related financial risks into the financial institution's risk management system, including internal controls and internal audit.

Tools and approaches for measuring and monitoring exposures to climate-related financial risks include, among others, exposure analysis, heat maps, climate risk dashboards, and scenario analysis. These tools can be leveraged to assess a financial institution's exposure to both physical and transition risks in both the shorter and longer term. Outputs should inform the risk identification process and the short- and long-term financial risks to a financial institution's business model from climate change.

Data, Risk Measurement, and Reporting. Sound climate-related financial risk management depends on the availability of timely, accurate, consistent, complete, and relevant data. Management should incorporate climate-related financial risk information into the financial institution's internal reporting, monitoring, and escalation processes to facilitate timely and sound decision-making across the financial institution. Effective risk data aggregation and reporting capabilities allow management to capture and report climate-related financial risk exposures, segmented or stratified by physical and transition risks, based upon the complexity and types of exposures. Available data, risk measurement tools, modeling methodologies, and reporting practices continue to evolve at a rapid pace; management should monitor these developments and incorporate them into the institution's climate-related financial risk management as warranted.

Scenario Analysis. Climate-related scenario analysis is emerging as an important approach for identifying, measuring, and managing climate-related financial risks. For the purposes of these principles, climate-related scenario analysis refers to exercises used to conduct a forward-looking assessment of the potential impact on a financial institution of changes in the economy, changes in the financial system, or the distribution of physical hazards resulting from climate-related financial risks. These exercises differ from traditional stress testing exercises that typically assess the potential impacts of transitory shocks to near-term economic and financial conditions. An effective climate-related scenario analysis framework provides a comprehensive and forward-looking perspective that financial institutions can apply alongside existing risk management practices to evaluate the resiliency of a financial institution's strategy and risk management to the structural changes arising from climate-related financial risks.

Management should develop and implement climate-related scenario analysis frameworks in a manner commensurate to the financial institution's size, complexity, business activity, and risk profile. These frameworks should include clearly defined objectives that reflect the financial institution's overall climate-related financial risk management strategies. These objectives could include, for example, exploring the impacts of climate-related financial risks on the financial institution's strategy and business model, identifying and measuring vulnerability to relevant climate-related financial risk factors including physical and transition risks, and estimating climate-related exposures and potential losses across a range of scenarios, including extreme but plausible scenarios. A climate-related scenario analysis framework can also assist management in identifying data and methodological limitations and uncertainty in climate-related financial risk management and informing management's assessment of the adequacy of the institution's climate-related financial risk management framework.

Climate-related scenario analyses should be subject to management oversight, validation, and quality control standards that would be commensurate to the financial institution's risk. Climate-related scenario analysis results should be clearly and regularly communicated to the board and all relevant individuals within the financial institution, including an appropriate level of information necessary to effectively convey the assumptions, limitations, and uncertainty of results.

Management of Risk Areas

A risk assessment process is part of a sound risk management framework, and it allows management to identify emerging risks and to develop and implement appropriate strategies to mitigate those material risks. Management should consider and incorporate climate-related financial risks when identifying and mitigating all types of risk. These risk assessment principles describe how climate-related financial risks can be addressed in various risk categories.

Credit Risk. Management should consider climate-related financial risks as part of the underwriting and ongoing monitoring of portfolios. Effective credit risk management practices could include monitoring climate-related credit risks through sectoral, geographic, and single-name concentration analyses, including credit risk concentrations stemming from physical and transition risks. As part of concentration risk analysis, management should assess potential changes in correlations across exposures or asset classes. Consistent with the financial institution's risk appetite statement, management should determine credit risk tolerances and lending limits related to material climate-related financial risks.

Liquidity Risk. Consistent with sound oversight and liquidity risk management, management should assess whether climate-related financial risks could affect its liquidity position and, if so, incorporate those risks into their liquidity risk management practices and liquidity buffers.

Other Financial Risk. Management should monitor interest rate risk and other model inputs for greater volatility or less predictability due to climate-related financial risks. Where appropriate, management should account for this uncertainty in their risk measurements and controls. Management should monitor how climate-related financial risks affect the financial institution's exposure to risk related to changing prices. While market participants are still researching how tomeasureclimate-related price risk, management should use the bestmeasurement methodologies reasonably available to them and refine them over time.

Operational Risk. Management should consider how climate-related financial risk exposures may adversely impact a financial institution's operations, control environment, and operational resilience. Sound operational risk management includes incorporating an

assessment across all business lines and operations, including operations performed by third parties, and considering climate-related impacts on business continuity and the evolving legal and regulatory landscape.

Legal and Compliance Risk. Management should consider how climate-related financial risks and risk mitigation measures affect the legal and regulatory landscape in which the financial institution operates. This should include, but is not limited to, taking into account possible changes to legal requirements for, or underwriting considerations related to, flood or disaster-related insurance, and ensuring that fair lending monitoring programs review whether and how the financial institution's risk mitigation measures potentially discriminate against consumers on a prohibited basis, such as race, color, or national origin.

Other Nonfinancial Risk. Consistent with sound oversight, the board and management should monitor how the execution of strategic decisions and the operating environment affect the financial institution's financial condition and operational resilience. Management should also consider the extent to which the financial institution's activities may increase the risk of negative financial impact and should implement adequate measures to account for these risks where material.

Michael J. Hsu,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on October 24, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–23844 Filed 10–27–23; 8:45 am]

BILLING CODE 6210–01–P; 4810–33–P; 6714–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–24–23GL]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''National Wastewater Surveillance System for SARS–CoV–2 and Other Infectious Disease Targets of Public Health Concern'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on July 7, 2023 to obtain comments from the public and affected agencies. CDC received 4,476 comments related to this notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

National Wastewater Surveillance System for SARS–CoV–2 and Other Infectious Disease Targets of Public Health Concern—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) seeks to continue and expand existing information collection by the National Wastewater Surveillance System for COVID–19 currently approved under the COVID–19 Public Health Emergency (PHE) PRA waiver. This information collection request is for three years.

The COVID–19 pandemic demonstrated the need for timely, actionable surveillance data to inform disease prevention and control activities. The genetic material of SARS–CoV–2, the virus that causes COVID–19, is detectable in the feces of infected individuals, regardless of their symptom status. Therefore, sampling and testing wastewater provides a means to assess SARS–CoV–2 infection trends in the community independent of clinical testing or other healthcare indicators. This public health surveillance approach can be used for other infectious diseases or targets of public health concern, such as mpox, influenza, and antimicrobial resistance.

The National Wastewater Surveillance System (NWSS) was originally established to support the CDC COVID–19 response, and now, NWSS serves as a public health tool to provide community-level disease trends. NWSS was designed to permit the addition or exchange of targets for wastewater infectious disease testing. This built-in flexibility will allow jurisdictions to adapt wastewater testing to changing public health needs, enable rapid responses to outbreaks or emergencies, and support broad capacity to detect future, emerging disease threats. Wastewater data have provided impactful information to local public health authorities to confirm trends observed in testing or hospitalization rates, and to assert the need for increased testing or healthcare resources. NWSS has supported jurisdictions throughout the United States to implement wastewater surveillance, and will continue to support state, tribal, local, and territorial (STLT) partners to collect wastewater data. Together with CDC-funded national-level wastewater testing by commercial partners, jurisdictions across the US have submitted data to

NWSS that represents an estimated 141 million individuals, or 41% of the US population. Wastewater data collection will be coordinated by STLT health departments through close collaboration with wastewater utilities. CDC will coordinate national-level testing contracts that cover up to 500 wastewater testing sites. Once collected, wastewater data will be submitted to the Data Collation and Integration for Public Health Event Response (DCIPHER) platform for participants to view and analyze in near real-time.

There are three data components comprising this collection request. For data collection Component 1, wastewater utilities or partners will collect metadata and samples from wastewater influent lines or at other points in the collection stream at regular intervals twice a week, or at irregular intervals as needed. The wastewater samples will be shipped, along with their associated sampling metadata, to STLT health departments where pathogen- or target-specific RNA or DNA will be quantified for up to 40 targets (*e.g.,* SARS–CoV–2, mpox, influenza, antibiotic resistance, etc.). Data collection for specific infectious diseases or targets will be based on public health need and input from the NWSS Advisory Council comprised of subject matter experts from across CDC. For some wastewater samples, target sequencing will be conducted to help public health officials monitor infectious disease variant trends (*e.g.,* SARS–CoV–2). STLT health departments will compile, review, and submit testing data to CDC through the NWSS DCIPHER platform, or national contract laboratories will submit data directly to the CDC. Four forms are to be submitted for this data component, with four documents used as reference.

For data collection Component 2, STLT health departments will work with participating utilities to obtain geographic boundary data of the wastewater utility service areas, also called a sewershed. These sewershed boundary data files (also referred to as spatial files) will be uploaded by jurisdiction health departments into the NWSS DCIPHER platform. No forms are to be submitted for this data component, only spatial files, with one document used as reference.

For data collection Component 3, STLT health departments may choose to develop a line list of reported cases of specific infections (*e.g.,* COVID–19, mpox, influenza, antibiotic resistant infections, etc.) associated with the participating wastewater utility service areas, for which wastewater testing data is also being collected. The STLT health department will submit to CDC the line list of deidentified cases into the NWSS DCIPHER platform. Two forms are to be submitted for this data component, with two documents used as reference.

Based on previous pilot data collection and additional estimates from 2022–2023 US case numbers in the CDC National Notifiable Disease Surveillance System, we estimate that 166,400 wastewater samples and 3,664,607 sewershed-level case data file identifiers will be collected and reported to NWSS each year, while 1,100 sewershed spatial files will only need to be submitted once during the three-year period. In total, the estimated annual burden for all data collection components for this request is 695,941 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
State, tribal, local, territorial health department staff.	*Component 1 Forms:* Component-1 BioSample_ww_template_v1.9_NWSS; Component-1 SRA_ww_template_v5.7_NWSS; Component-1 NWSS_DCIPHER_Wastewater_Data_CSV_Upload_Template_v3_1_All Fields.	55	2,080	1
Wastewater Utilities Staff	*Component 1 Forms:* Component-1 NWSS_DCIPHER_Wastewater_Data_CSV_Upload_Template_v3_1_All Fields.	1,100	104	80/60
Contract laboratory	*Component 1 Forms:* Component-1 BioSample_ww_template_v1.9_NWSS; Component-1 SRA_ww_template_v5.7_NWSS; Component-1 NWSS_DCIPHER_Wastewater_Data_CSV_Upload_Template_v3_1_All Fields; Component-1 NWSS_Sequencing_Manifest_Template.	1	52,000	140/60
State, tribal, local, territorial health department staff.	*Component 2 Forms:* Sewershed spatial files, no form required	55	20	5/60
Wastewater utility staff	*Component 2 Forms:* Sewershed spatial files, no form required	1,100	1	2
State, tribal, local, territorial health department staff.	*Component 3 Forms:* Component-3 NWSS_DCIPHER_CaseData_CSVUpload_Template; Component-3 NWSS_DCIPHER_Sewershed_Name_Crosswalk_CSV_Upload_Template.	55	66,629	5/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

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BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–24–1373]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Fire Fighter Fatality Investigation and Prevention Program Survey'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on August 23, 2023, to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to

allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Fire Fighter Fatality Investigation and Prevention Program Survey (OMB Control No. 0920–1373, Exp. 10/31/2023)—Extension—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Fire Fighter Fatality Investigation and Prevention Program (FFFIPP) conducts independent investigations of fire fighter (FF) line-of-duty deaths (LODD) and recommends ways to prevent deaths and injuries. In 2003, an evaluation was conducted to determine the extent to which recommendations from NIOSH investigations of FF fatalities are being implemented by fire departments. Since then, there have been changes to the Program recommendations and methods of disseminating FFFIPP reports. For example, there have been changes to: (1) the details and types of recommendations for preventing FF fatalities; and (2) the method to disseminate the FFFIPP reports to FDs (driven in large part by cost). Dissemination methods have evolved from hardcopy mailings to FDs, to internet-based, with notifications of new FFFIPP reports by the fire service media and if FDs sign-up at the NIOSH website for notifications of new reports.

Understanding how, or if NIOSH recommendations are used by various types of FDs will allow a better understanding of barriers to the use of proven prevention recommendations and help identify approaches to improve the delivery of services to FDs. Additionally, we will gain insight into whether changes to the communication and dissemination have impacted the reach of these recommendations. Knowing if different types of FDs are aware of and willing to access FFFIPP reports and recommendations in non-print formats is critical, as these recommendations cannot have the intended impact of saving fire fighter lives if large numbers of FDs do not know where to find NIOSH reports or have the resources to access them.

The purpose of this data collection is to assess FD implementation of the NIOSH FFFIPP recommendations and identify barriers to implementation of recommendations. Results will provide an understanding of current FD operational procedures, insight into MV-related activities and related policies, and identify whether FFFIPP recommendations are being utilized by FDs. Findings will inform strategies for communication of future recommendations and identify areas for potential intervention projects in order to improve the delivery of services and help ensure an effective and efficient stakeholder experience.

The estimate for burden hours is based on a pilot test of the survey instrument by eight FD personnel. In the pilot test, the average time to complete the survey, including time for reviewing instructions, gathering needed information, and completing the survey was 10–25 minutes. Based on these results, the estimated time range for actual respondents to complete the survey is 10–25 minutes. For the purposes of estimating burden hours, the upper limit of this range is used. There are screening questions at the beginning of the survey so all respondents may not actually participate.

The respondent universe is based on: (1) 4500 fire departments; (2) eight strata (region, department type): and (3) position (firefighter, chief, company officer). An estimated 13,500 respondents are anticipated to participate in the survey. The annual respondent burden is estimated to be 4,050 hours, and there is no cost to respondents other than their time to participate.

Estimated Annualized Burden Hours

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Fire fighters	Survey	4,500	1	18/60
Fire Chiefs	Survey	4,500	1	18/60
Company Officers	Survey	4,500	1	18/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–23857 Filed 10–27–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–24–24AH; Docket No. CDC–2023–0087]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of Government information, invites the general public and other Federal agencies to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled IRB Authorization Agreement for Human Research. The purpose of the data collection is to keep track of, and provide regulatory oversight for, those institutions that have elected to rely on the CDC IRB's review of research studies.

DATES: CDC must receive written comments on or before December 29, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2023–0087 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

IRB Authorization Agreement for Human Research—New—Office of Science (OS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CDC Human Research Protection Office (HRPO) often receives requests from outside institutions seeking to rely on the CDC Institutional Review Board (IRB) for review of a research study. This arrangement also allows multiple institutions to use, or rely on, the CDC IRB for centralized review and approval of research studies instead of review by the site-specific IRBs, which helps reduce duplication of effort, delays, and expenses.

To meet regulatory requirements, institutions that elect to rely on the CDC IRB's review of research studies are required to complete a CDC IRB Authorization Agreement for Human Research and a Local Context Survey. The agreement and the survey will be used to provide regulatory oversight for human subjects research, maintain records and track those institutions that have elected to rely on the CDC IRB for review.

CDC requests OMB approval for an estimated 450 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Avg. burden per response (in hrs.)	Total burden (in hrs.)
Hospital/Academic Institutions/IRB Administrators.	CDC IRB Authorization Agreement for Human Research (for review, completion and submission to CDC).	150	1	1	150
Hospital/Academic Institutions/IRB Administrators.	Local context survey (for completion and submission to CDC.	150	1	2	300
Total					450

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–23858 Filed 10–27–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–24–1078; Docket No. CDC–2023–0086]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of Government information, invites the general public and other Federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled The Division of Workforce Development (DWD) Fellowship Alumni Assessment. Information will be collected from graduates of selected public health fellowships to assess the impact of fellowship programs and improve their management.

DATES: CDC must receive written comments on or before December 29, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2023–0086 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

The Division of Workforce Development (DWD) Fellowship Alumni Assessment (OMB Control No. 0920–1078, Exp. 02/29/2024)—Revision—National Center for State, Tribal, Local, and Territorial Public Health Infrastructure and Workforce (NCSTLTPHIW), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) works to protect America from health, safety and security threats, both foreign and in the U.S. CDC strives to fulfill this mission, in part, through a competent and capable public health workforce. One mechanism for developing the public health workforce is through fellowship programs like those sponsored and supported by the Division of Workforce Development (DWD).

A robust public health workforce has sufficient workforce, organizational, and systems capacity to deliver essential public health services and protect the public's health. In 2023, after a CDC reorganization agency-wide, a number of CDC career fellowships were consolidated within one new division, DWD, which has a lead role in public health workforce development. Across all of its branches, DWD manages or supports many full-time, cross-cutting career fellowship programs that support CDC and State, Tribal, local, and Territorial health departments, and partner organizations. Through these programs, DWD strives to provide quality training for current and future members of the public health workforce to ensure they have foundational and contemporary public health skills. Nearly all these programs serve as a pathway to CDC career communities and are an important source of supply for the public health workforce.

In 2015, CDC obtained OMB approval to conduct follow-up surveys of alumni who had completed the Public Health Associate Program (PHAP) (OMB Control No. 0920–1078). Findings from the PHAP alumni surveys have improved CDC's understanding of alumni retention and career progression in the public health workforce and have informed management of the PHAP. In the current Revision, CDC proposes to build on lessons learned in PHAP fellowship evaluation. CDC will broaden the scope of information collection to accommodate the full portfolio of DWD fellowships, which currently include the Epidemiology Elective Program (EEP), Evaluation Fellowship (EF), Epidemic Intelligence Service (EIS), CDC E-Learning Institute, Future Leaders in Infectious and Global Health Threats (FLIGHT), Laboratory Leadership Service (LLS), CDC Steven M. Teutsch Prevention Effectiveness (PE) Fellowship, Preventive Medicine Residency and Fellowship, Population Health Training in Place Program (PHTPP), Science Ambassador Fellowship (SAF), and PHAP. In addition to expanding the respondent

universe for fellowship alumni, this ICR is intentionally removing the host site supervisor component included in the original ICR. This revision will specifically focus on fellowship alumni only. A new ICR will be created for the host site supervisor survey.

Each year, new cohorts ranging from three to 200 individuals are enrolled across these fellowship programs. While each fellowship differs in focus area, type of fellow, and projects, they all have the same mission: to train and provide learning opportunities to early- and mid-career professionals who contribute to the public health workforce. Post-fellowship, it is the goal that alumni seek employment within the public health system (*i.e.,* Federal, State, Tribal, local, or Territorial health agencies, or non-governmental organizations).

CDC will apply a common approach to assessing how fellowship participation impacts the job placement, retention in the public health workforce, and career progression of alumni. DWD Fellowship Alumni Surveys will be administered to individual program alumni at three different time points (one year, three years, and five years post-program completion). Each fellowship program will invite their program's alumni to participate. Fellowships will be deploying surveys specific to their programs. Assessment questions will remain consistent at each administration timepoint (*i.e.,* one year, three years, or five years post-program completion). The language, however, will be updated for each survey administration to reflect the appropriate time period. Surveys will be administered electronically; a link to the survey will be provided in an email invitation. CDC will discontinue the Host Site Supervisor Survey previously approved for the PHAP fellowship alumni.

CDC will use survey findings to document program outcomes, demonstrate evidence of impact, and inform decision making about future program direction. The results of these surveys may be published in peer reviewed journals and/or in non-scientific publications such as practice reports and/or fact sheets. OMB approval is requested for three years. The estimated burden is eight minutes per respondent per survey, and the total annualized estimated burden is 519 hours. Participation is voluntary and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden time per response (in hours)	Total response burden (in hours)
DWD Fellowship Alumni	DWD Alumni 1-Year Survey	1300	1	8/60	173
DWD Fellowship Alumni	DWD Alumni 3-Year Survey	1300	1	8/60	173
DWD Fellowship Alumni	DWD Alumni 5-Year Survey	1300	1	8/60	173
Total					519

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–23860 Filed 10–27–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–24–0138; Docket No. CDC–2023–0088]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of Government information, invites the general public and other Federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Pulmonary Function Testing Course Approval Program. The program consists of an application submitted by potential sponsors—universities, hospitals, and private consulting firms, who seek NIOSH approval to conduct courses, and if approved, notification to NIOSH of any course or faculty changes during the approval period, which is limited to five years.

DATES: CDC must receive written comments on or before December 29, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2023–0088 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information

collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

Pulmonary Function Testing Course Approval Program. (OMB Control Number 0920–0138, Expiration Date 3/31/2024)—Extension—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

NIOSH has the responsibility under the Occupational Safety and Health Administration's (OSHA) Cotton Dust Standard, 29 CFR 1920.1043, for approving courses to train technicians to perform pulmonary function testing in the cotton industry. Successful completion of a NIOSH-approved course is mandatory under this Standard. In addition, regulations at 42 CFR 37.95(a) specify that persons administering spirometry tests for the national Coal Workers Health Surveillance Program must successfully complete a NIOSH-approved spirometry training course and maintain a valid certificate by periodically completing NIOSH-approved spirometry refresher training courses. Also, 29 CFR 1910.1053(i)(2)(iv), 29 CFR 1910.1053(i)(3), 29 CFR 1926.1153(h)(2)(iv) and 29 CFR 1926.1153(h)(3) specify that pulmonary function tests for initial and periodic examinations in general industry and construction performed under the Respirable Crystalline Silica Standard should be administered by a spirometry technician with a current certificate from a NIOSH-approved spirometry course.

To carry out its responsibility, NIOSH maintains a Pulmonary Function Testing Course Approval Program. The program consists of an application submitted by potential sponsors (universities, hospitals, and private consulting firms) who seek NIOSH approval to conduct courses, and if approved, notification to NIOSH of any course or faculty changes during the approval period, which is limited to five years. The application form and added materials, including an agenda, curriculum vitae, and course materials are reviewed by NIOSH to determine if the applicant has developed a program which adheres to the criteria required in the Standard. Following approval, any subsequent changes to the course are submitted by course sponsors via letter or email and reviewed by NIOSH staff to assure that the changes in faculty or course content continue to meet course requirements. Course sponsors also voluntarily submit an annual report to inform NIOSH of their class activity level and any faculty changes.

Sponsors who elect to have their approval renewed for an additional five-year period submit a renewal application and supporting documentation for review by NIOSH staff to ensure the course curriculum meets all current standard requirements. Approved courses that elect to offer NIOSH-Approved Spirometry Refresher Courses must submit a separate application and supporting documents for review by NIOSH staff. Institutions and organizations throughout the country voluntarily submit applications and materials to become course sponsors and carry out training. Submissions are required for NIOSH to evaluate a course and determine whether it meets the criteria in the Standard and whether technicians will be adequately trained as mandated under the Standard.

NIOSH will disseminate a one-time customer satisfaction survey to course directors and sponsor representatives to evaluate our service to courses, the effectiveness of the program changes implemented since 2005, and the usefulness of potential program enhancements. The estimated annual burden to respondents is 178 hours. There will be no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Potential Sponsors	Initial Application	3	1	10	30
Approved Sponsors	Annual Report	34	1	30/60	17
Approved Sponsors	Report for Course Changes	24	1	30/60	12
Approved Sponsors	Renewal Application	13	1	6	78
Approved Sponsors	Refresher Course Application	3	1	8	24
Approved Sponsors	One-Time Customer Satisfaction Survey	34	1	30/60	17
Total					178

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–23859 Filed 10–27–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10434 #77]

Medicaid and Children's Health Insurance Program (CHIP) Generic Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: On May 28, 2010, the Office of Management and Budget (OMB) issued Paperwork Reduction Act (PRA) guidance related to the ''generic'' clearance process. Generally, this is an expedited process by which agencies may obtain OMB's approval of collection of information requests that are ''usually voluntary, low-burden, and uncontroversial collections,'' do not raise any substantive or policy issues, and do not require policy or methodological review. The process requires the submission of an overarching plan that defines the scope of the individual collections that would fall under its umbrella. On October 23, 2011, OMB approved our initial request to use the generic clearance process under control number 0938–1148 (CMS–10398). It was last approved on April 26, 2021, via the standard PRA process which included the publication of 60- and 30-day **Federal Register** notices. The scope of the April 2021 umbrella accounts for Medicaid and CHIP State plan amendments, waivers, demonstrations, and reporting. This **Federal Register** notice seeks public comment on one or more of our collection of information requests that we believe are generic and fall within the scope of the umbrella. Interested persons are invited to submit 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 November 13, 2023.

ADDRESSES: When commenting, please reference the applicable form number (see below) and the OMB control number (0938–1148). 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: CMS–10398 (#64)/OMB control number: 0938–1148, 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: Following is a summary of the use and burden associated with the subject information collection(s). More detailed information can be found in the collection's supporting statement and associated materials (see **ADDRESSES**).

Generic Information Collection

1. *Title of Information Collection:* Medicaid and Continuous Eligibility for Children; *Type of Information Collection Request:* Revision of a currently approved collection; *Use:* Section 5112 of the Consolidated Appropriations Act, 2023 (CAA) made it mandatory for states to provide 12 months of continuous eligibility for children under age 19, whereas previously it was an option states could elect to provide and there were flexibilities it how states could design continuous eligibly for children. States must indicate in the state plan their compliance with the requirement to provide continued coverage for hospitalized children and in order to comply with section 5112 of the CAA must submit a SPA to provide continuous eligibility for children if they do not already do so in their Medicaid state plan, or if their current continuous eligibility does not comply with the CAA requirements. *Form Number:* CMS–10434 (#77) (OMB control number: 0938–1188); *Frequency:* Once and on occasion; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 19; *Total Annual Responses:* 19; *Total Annual Hours:* 485. For policy questions regarding this collection contact: Caroline Haarmann at (667) 230–1850.

Dated: October 25, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–23889 Filed 10–27–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Survey on Where Parents Look for and Find Information and How They Use Information When Selecting Child Care (New Collection)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) within the U.S. Department of Health and Human Services (HHS) is proposing to collect nationally representative survey data to learn more about where parents look for and find information about Child Care and Early Education (CCEE); how parents assess the people, places, or things that may offer CCEE information; what types of CCEE information parents look for; and how parents use information to select CCEE. The study aims to gather information that may be used by Child Care Lead Agencies to inform their consumer education efforts.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *OPREinfocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: ACF has contracted with NORC to implement this study, which is part of the Consumer Education and Parental Choice in Early Care and Education (CEPC) project. The study will select a nationally representative sample from NORC's probability-based AmeriSpeak panel. The AmeriSpeak panel provides sample coverage of approximately 97 percent of the U.S. population. It currently contains 48,900 panel members age 13 and over residing in over 40,000 households. U.S. households are randomly selected with a known, non-zero probability from the NORC National Frame, and then recruited by mail, telephone, and by field interviewers face-to-face. NORC's in-person recruitment enhances representativeness for young adults, lower socio-economic households, non-internet households, and other households that are typically hard to reach for statistical surveys of the population.

We will collect information about (a) where parents look for and find information about CCEE; (b) how parents assess the people, places, or things that may offer CCEE information; (c) how easy or hard it is for parents to find CCEE information; (d) the types of CCEE information that parents look for and say are helpful in choosing CCEE; (e) information about the last time parents made a decision about CCEE and what information they tried to learn about at that time; (f) parent's assessments of the CCEE options at the time they made their last CCEE decision; (g) how well parents' CCEE decision met their family's needs; and (h) demographic information about families.

Respondents: AmeriSpeak panelists who indicated that they have a young child in the household will be invited to complete the survey if they are at least 18 years of age. If a household has two or more panel members who reside in a household with a young child, one will be selected at random to complete the survey, with preference given to parents/legal guardians. Selected panelists will be asked questions to confirm eligibility for the survey, including that the household has at least one child under the age of 6 but not in kindergarten.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total/annual burden (in hours)
Parent Survey Questionnaire (Section AE Only)	600	1	.08	48
Parent Survey Questionnaire (Section A—DA)	1,500	1	.33	495

Estimated Total Annual Burden Hours: 543.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Child Care and Development Block Grant (CCDBG) Act of 1990, as amended (42 U.S.C. 9857 *et seq.*).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–23910 Filed 10–27–23; 8:45 am]

BILLING CODE 4184–23–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Charter Renewal for the National Advisory Committee on Rural Health and Human Services

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, HHS is hereby giving notice that the National Advisory Committee on Rural Health and Human Services (NACRHHS or Committee) has been renewed. The effective date of the renewed charter is October 29, 2023.

FOR FURTHER INFORMATION CONTACT: Sahira Rafiullah, Federal Office of Rural Health Policy, HRSA, 5600 Fishers Lane, 17W36, Rockville, Maryland 20857; 240–316–5874 or *srafiullah@hrsa.gov.*

SUPPLEMENTARY INFORMATION: NACRHHS is authorized by Section 222 of the Public Health Service Act (42 U.S.C. 217a). The Committee is governed by provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. chapter 10), which sets forth standards for the formation and use of advisory committees.

NACRHHS provides advice and recommendations to the Secretary of HHS on issues related to how HHS and its programs serve rural communities. The Committee will focus attention on rural health and human service problems, such as the provision and financing of health care and human services in rural areas.

The charter renewal for the NACRHHS was approved on October 20, 2023. Renewal of the NACRHHS charter gives authorization for the committee to operate until October 29, 2025. A copy of the NACRHHS charter is available on the NACRHHS website at *https://www.hrsa.gov/advisory-committees/rural-health.* A copy of the charter also can be obtained by accessing the FACA database that is maintained by the Committee Management Secretariat under the General Services Administration. The website address for the FACA database is *http://www.facadatabase.gov/.*

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023–23852 Filed 10–27–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, National Cancer Institute.

The meeting will be held as a virtual meeting and is open to the public as indicated below. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocast at the following link: *http://videocast.nih.gov/.*

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Cancer Institute.

Date: March 4, 2024.

Open: 11:00 a.m. to 11:30 a.m.

Agenda: Remarks from the NCI Director.

Closed: 11:40 a.m. to 4:30 p.m.

Agenda: Personnel qualifications and performance, and competence of individual investigators.

Name of Committee: Board of Scientific Counselors, National Cancer Institute.

Date: March 5, 2024.

Closed: 11:00 a.m. to 1:30 p.m.

Agenda: Personnel qualifications and performance, and competence of individual investigators.

Place: National Cancer Institute, 9609 Medical Center Drive, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Brian E. Wojcik, Ph.D., Senior Review Administrator, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 9609 Medical Center Drive, Room 3W414, Rockville, MD 20850, 240–276–5660, *wojcikb@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *https://deainfo.nci.nih.gov/advisory/bsc/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 25, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–23881 Filed 10–27–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be held as a virtual meeting and open to the public. as indicated below. Individuals who plan to view the virtual meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should submit a request using the following link: *https://www.nigms.nih.gov/Pages/ContactUs.aspx* at least 5 days prior to the event. The open session will also be videocast, closed captioned, and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*).

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory General Medical Sciences Council.

Date: February 1, 2024.

Open: 9:30 a.m. to 12:30 p.m.

Agenda: For the discussion of program policies and issues; opening remarks; report of the Director, NIGMS; and other business of the Council.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Closed: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Erica L. Brown, Ph.D., Director, Division of Extramural Activities, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 2AN24C, Bethesda, MD 20892, 301–594–4499, *erica.brown@nih.gov.*

Members of the public are welcome to provide written comments by emailing *NIGMS_DEA_Mailbox@nigms.nih.gov* at least 3 days in advance of the meeting. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nigms.nih.gov/About/Council,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: October 24, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–23809 Filed 10–27–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, PAR 20–103: Collaborative Program Grant for Multidisciplinary Teams (RM1), November 03, 2023, 10:00 a.m. to November 03, 2023, 06:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on October 05, 2023, 88 FR 69211, Doc 2023–22116.

This meeting is being amended to change the meeting panel name to PAR 23–077: Collaborative Program Grant for Multidisciplinary Teams (RM1). The old name contains an old PAR number: PAR 20–103. The meeting is closed to the public.

Dated: October 24, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–23811 Filed 10–27–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Reorganization of the Center for Mental Health Services

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: Statement of Organization, Functions, and Delegations of Authority. The Substance Abuse and Mental Health Services Administration has modified its structure. This new organizational structure was approved by the Secretary of Health and Human Services on October 11, 2023, and became effective on October 26, 2023.

FOR FURTHER INFORMATION CONTACT: Tison Thomas, Deputy Director, Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, Room 14E51, 5600 Fishers Lane, Rockville, MD 20857 Phone: 240–276–2896.

SUPPLEMENTARY INFORMATION: Part M of the SAMHSA Statement of Organization, Functions, and Delegations of Authority for HHS at 71 FR 19740, April 17, 2006, is amended to reflect changes of the functional statements for the Center for Mental Health Services (CMHS). This amendment reflects the addition of two new divisions.

President Biden, in his Unity Agenda, has underscored the utmost significance of providing mental health services to Americans who need it. HHS also seeks to provide innovative mental health treatment and recovery services for individuals suffering from serious mental illness (SMI) and children with serious emotional disturbances (SED). There has been a substantial increase in funding, which has provided over 2,600 grants and around 25 technical assistance centers to cater to mental health treatment and recovery services.

CMHS has taken the lead in addressing the mental health needs of Americans, focusing primarily on suicide prevention, developing and supporting a crisis continuum, improving children's mental health, school-based activities, and increasing access to and the quality of services through Certified Community Behavioral Health Clinics and evidence-based practices. However, despite these efforts, new innovations, research, and other treatment activities have not reached all those who are in need of mental health services. The proposed reorganization takes into account these and other factors, including the scope and span of grants and function, subject matter areas, age group focus (children versus adults), and geographic focus (community versus state).

In order to enhance administrative and operational efficiencies, CMHS proposes that each division within the center should have two branches consisting of approximately 20 to 25 staff members in each newly-formed division. Currently, the two divisions consist of branches that have a different mission/focus. Having the divisions reorganized based on topic areas will assist with excellence in grant and contract administration. As a result, CMHS proposes to add two new divisions, which will create five divisions with two braches in each division. The new divisions are: Division of Children and School Mental Health (DCSMH) and the Division of Suicide Prevention and Community Supports (DSPCS).

Division of Children and School Mental Health

The realigned DCSMH will focus on children, youth, and young adults with SED or those who are at risk of developing SMI. The realigned division will be created by moving two existing branches from the Division of Trauma and Behavioral Health (DTBH). DTBH currently has two other branches that focus on disaster behavioral health and traumatic stress. The two branches in DCSMH will be, the Child Adolescent and Family Branch (CAFB) and the Mental Health Promotion Branch (MHPB). This new division will help CMHS have dedicated leadership focusing on children's mental health issues. The following major grant programs within these two branches align with the new division's mission.

CAFB primarily focuses on providing services for children, youth, and young adults with and/or at risk for SMI and/or SED. The CAFB programs aim to support these individuals and their families by improving mental health outcomes. The branch manages the Comprehensive Community Mental Health Services for Children with Serious Emotional Disturbance (Children's Mental Health Initiative or CMHI), authorized under Sections 561 through 565 of the Public Health Service Act (PHSA), 42 U.S.C. 290ff through 290ff–4, and provides grants to expand and sustain services for children and youth, birth through age 21, who are at risk for or have SED. The Clinical High Risk for Psychosis program is a set-aside of CMHI, and the most recent authorization was included in the Consolidated Appropriations Act, 2023, Public Law 117–328. The branch also has a few additional grants through the Projects of Regional and National Significance (PRNS) and contracts.

The MHPB primarily focuses on mental health promotion and early intervention programs. The MHPB programs include infant and early childhood mental health (Section 399Z–2 of the PHSA, 42 U.S.C. 280h–6), Trauma-Informed Services in Schools (Section 7134 of Pub. L. 115–271, 42 U.S.C. 280h–7), mental health awareness training (Section 520J of the PHSA, 42 U.S.C. 290bb–41), and the Center of Excellence for Eating Disorders (Section 520N of the PHSA, 42 U.S.C. 290bb–45). Additionally, the MHPB oversees Project AWARE, authorized under Section 520A of the PHSA 42 U.S.C. 290bb–32 (PRNS) and Section 520B of the PHSA 42 U.S.C. 290bb–33 (student suicide prevention piece), which includes specific provisions for mental health initiatives and student suicide prevention training. The branch also has a few additional grants through the PRNS and contracts.

Division of Suicide Prevention and Community Supports

The realigned DSPCS will focus on community-based grants and suicide prevention programs. The proposed division will be created by moving two of the existing branches from the Division of Community Behavioral Health (DCBH). DCBH has two other branches., the Comprehensive Services and Integration Branch and the Comprehensive Services and Systems Branch. The two branches that will be in the DSPCS will be the Suicide Prevention Branch (SPB) and the Community Support Programs Branch (CSPB). Having these two branches within a new division will give an added focus on suicide prevention and community based, evidence-based grant programs. The major grant programs within these two branches are as follows.

SPB plays a crucial role in suicide prevention efforts. The Garrett Lee Smith Campus Suicide Prevention Program is authorized under Section 520E–2 of PHSA, 42 U.S.C. 290bb–36b, while the Garrett Lee Smith State/Tribal Suicide Prevention Program is

authorized under Section 520E of PHSA, 42 U.S.C. 290bb–36. The Mental Health Crisis Response Partnership Pilot Program is authorized under Section 520F of the PHSA, 42 U.S.C. 290bb–37. The National Strategy for Suicide Prevention grant program is authorized under Section 520L of PHSA, 42 U.S.C. 290bb–43, and the Zero Suicide initiative is codified under the same citation. The branch also has few additional grants through the PRNS and contracts.

CSPB focuses on developing effective community-based treatment and recovery support services for individuals with serious mental illness. The programs within this branch include, the Assertive Community Treatment Grant Program, authorized under Section 520M of the PHSA, 42 U.S.C. 290bb–44, the Assisted Outpatient Treatment Grant Program for Individuals With SMI, authorized under Section 224 of the Protecting Access to Medicare Act, 42 U.S.C. 290aa–17, focuses on assisting individuals with SMI in accessing necessary outpatient treatment. The CSPB also oversees grants for the benefit of homeless individuals, authorized under Section 506 of the PHSA, 42 U.S.C. 290aa–5, and the Law Enforcement and Behavioral Health Partnerships for Early Diversion program, authorized under Section 520G of the PHSA, 42 U.S.C. 290bb–38. The branch also has few additional grants through the PRNS and contracts.

Delegations of Authority

All delegations and redelegations of authority to officers and employees of SAMHSA which were in effect immediately prior to the effective date of this reorganization shall continue to be in effect.

Authority: 44 U.S.C. 3101.

Xavier Becerra,

Secretary of Health and Human Services.

[FR Doc. 2023–23805 Filed 10–26–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

[Docket ID FEMA–2014–0022]

Technical Mapping Advisory Council; Meeting

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The Federal Emergency Management Agency (FEMA) Technical Mapping Advisory Council (TMAC) will hold an in-person public meeting with a virtual option on Tuesday, November 28, 2023, and Wednesday, November 29, 2023. The meeting will be open to the public in-person and via a Microsoft Teams Video Communications link.

DATES: The TMAC will meet on Tuesday, November 28, 2023, from 8 a.m. to 5 p.m. Eastern Standard Time (EST) and Wednesday, November 29, 2023, from 8 a.m. to 5 p.m. EST. Please note that the meeting will close early if the TMAC has completed its business.

ADDRESSES: The meeting will be held in-person at the FEMA Conference Center at 400 C St. SW, Washington, DC 20472 and virtually using the following Microsoft Teams Video Communications link (Tuesday Link: *http://tinyurl.com/42997fks;* Wednesday Link: *http://tinyurl.com/ywpsxfnv*). Members of the public who wish to attend the in-person or virtual meeting must register in advance by sending an email to *FEMA-TMAC@fema.dhs.gov* (Attn: Brian Koper) by 5:00 p.m. EST on Thursday, November 26, 2023.

To facilitate public participation, members of the public are invited to provide written comments on the issues to be considered by the TMAC, as listed in the **SUPPLEMENTARY INFORMATION** caption below. Associated meeting materials will be available upon request after Friday, November 17, 2023. To receive a copy of any relevant materials, please send the request to: *FEMA-TMAC@fema.dhs.gov* (Attn: Brian Koper). Written comments to be considered by the committee at the time of the meeting must be submitted and received by Tuesday, November 21, 2023, 5:00 p.m. EST identified by Docket ID FEMA–2014–0022, and submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email:* Address the email TO: *FEMA-TMAC@fema.dhs.gov.* Include the docket number in the subject line of the message. Include name and contact information in the body of the email.
- *Instructions:* All submissions received must include the words ''Federal Emergency Management Agency'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may wish to review the Privacy & Security Notice via a link on the homepage of *www.regulations.gov.*
- *Docket:* For docket access to read background documents or comments received by the TMAC, go to *http://www.regulations.gov* and search for the Docket ID FEMA–2014–0022.

A public comment period will be held on Tuesday, November 28, 2023, from 3 p.m. to 3:30 p.m. EST and Wednesday, November 29, 2023, from 12 p.m. to 12:30 p.m. EST. The public comment period will not exceed 30 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact the individual listed below to register as a speaker by Friday, November 17, 2023, 5 p.m. EST. Please be prepared to submit a written version of your public comment.

FEMA is committed to ensuring all participants have equal access regardless of disability status. If you require reasonable accommodation due to a disability to fully participate, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** caption as soon as possible.

FOR FURTHER INFORMATION CONTACT: Brian Koper, Designated Federal Officer for the TMAC, FEMA, 400 C St. SW, Washington, DC 20472, telephone 202–646–3085, and email *brian.koper@fema.dhs.gov.* The TMAC website is: *https://www.fema.gov/flood-maps/guidance-partners/technical-mapping-advisory-council.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act,* Public Law 117–286, 5 U.S.C. ch. 10.

In accordance with the *Biggert-Waters Flood Insurance Reform Act of 2012,* the TMAC makes recommendations to the FEMA Administrator on: (1) how to improve, in a cost-effective manner, the (a) accuracy, general quality, ease of use, and distribution and dissemination of flood insurance rate maps and risk data; and (b) performance metrics and milestones required to effectively and efficiently map flood risk areas in the United States; (2) mapping standards and guidelines for (a) flood insurance rate maps, and (b) data accuracy, data quality, data currency, and data eligibility; (3) how to maintain, on an ongoing basis, flood insurance rate maps and flood risk identification; (4) procedures for delegating mapping activities to State and local mapping partners; and (5) (a) methods for improving interagency and intergovernmental coordination on flood mapping and flood risk determination, and (b) a funding strategy to leverage and coordinate budgets and expenditures across Federal agencies. Furthermore, the TMAC is

required to submit an annual report to the FEMA Administrator that contains: (1) a description of the activities of the Council; (2) an evaluation of the status and performance of flood insurance rate maps and mapping activities to revise and update Flood Insurance Rate Maps; and (3) a summary of recommendations made by the Council to the FEMA Administrator.

Agenda: The purpose of this meeting is for the TMAC members to discuss the content of the 2023 TMAC Annual Report. Any related materials will be available upon request prior to the meeting to provide the public with an opportunity to review the materials. The full agenda and related meeting materials will be available upon request by Friday, November 17, 2023. To receive a copy of any relevant materials, please send the request to: *FEMA-TMAC@fema.dhs.gov* (Attn: Brian Koper).

Kevin Werner,

Acting Assistant Administrator for Risk Management, Federal Insurance and Mitigation Administration, Resilience, Federal Emergency Management Agency.

[FR Doc. 2023–23874 Filed 10–27–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2018–0001]

Surface Transportation Security Advisory Committee; Public Meeting

AGENCY: Transportation Security Administration, Department of Homeland Security.

ACTION: Committee management; notice of open Federal advisory committee meeting.

SUMMARY: The Transportation Security Administration (TSA) will hold a virtual meeting of the Surface Transportation Security Advisory Committee (STSAC) on November 16, 2023. Members of the public will be able to participate virtually via WebEx. The meeting agenda and information on public participation is provided below under the **SUPPLEMENTARY INFORMATION** section.

DATES: The meeting will take place on Thursday, November 16, 2023. The meeting will begin at 1 p.m. and adjourn at 4 p.m., Eastern Standard Time. As listed in the Public Participation section below, requests to attend the meeting, to address the STSAC, and/or for accommodations because of a disability, must be received by November 10, 2023.

ADDRESSES: This meeting will be held virtually via teleconference. See Public Participation section below for information on how to register to attend the meeting. Attendance information will be provided upon registration.

FOR FURTHER INFORMATION CONTACT: Judith Harroun-Lord, Surface Transportation Security Advisory Committee, Designated Federal Officer, U.S. Department of Homeland Security, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, Virginia, 20598, *STSAC@tsa.dhs.gov,* 571–227–2283.

SUPPLEMENTARY INFORMATION:

Background

Section 1969 of the TSA Modernization Act,[1] established the STSAC to advise, consult with, report to, and make recommendations to the TSA Administrator on surface transportation security matters, including the development, refinement, and implementation of policies, programs, initiatives, rulemakings, and security directives pertaining to surface transportation security. The STSAC also considers risk-based security approaches in the performance of its duties. While section 1969(f) exempts the STSAC from the Federal Advisory Committee Act,[2] paragraph 1969(c)(6)(B) requires that TSA hold at least one public meeting each year.

Meeting Agenda

- Welcoming Remarks/Introductions
- Committee and Subcommittee briefings on activities, key issues, and focus areas—Cybersecurity Information Sharing; Emergency Management and Resiliency; Insider Threat; and Security Risk and Intelligence
- Public Comments
- Closing Comments and Adjournment

Public Participation

The meeting will be open to the public via WebEx. Members of the public who wish to participate are required to register via email by submitting their name, contact number, and affiliation (if applicable) to *STSAC@tsa.dhs.gov* by November 10, 2023. Attendees will be admitted on a first-to-register basis and attendance may be limited due to WebEx meeting constraints. Attendance information will be provided upon registration.

Members of the public wishing to present oral or written statements must make advance arrangements by November 10, 2023. The statements must specifically address issues pertaining to the items listed in Meeting Agenda discussed above. Advance requests to present and/or written statements must be submitted via email to *STSAC@tsa.dhs.gov.* Oral presenters are requested to limit their comments to 3 minutes.

The STSAC and TSA are committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by November 10, 2023.

Dated: October 25, 2023.

Eddie D. Mayenschein,

Assistant Administrator, Policy, Plans, and Engagement.

[FR Doc. 2023–23883 Filed 10–27–23; 8:45 am]

BILLING CODE 9110–05–P

[1] Division K of the FAA Reauthorization Act of 2018, Public Law 115–254 (132 Stat. 3186; Oct. 5, 2018), codified at 6 U.S.C. 204.

[2] 5 U.S.C. ch. 10.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7077–N–21]

Privacy Act of 1974; System of Records

AGENCY: Office of Single-Family Housing, Office of Housing, HUD.

ACTION: Notice of a modified system of records.

SUMMARY: HUD Single Family Asset Management relies on the Single-Family Mortgage Asset Recovery Technology (SMART) System to provide various loan servicing functions including generating payoffs and processing payments for HUD FHA Insured Title II Secretary held loans. Pursuant to the Privacy Act of 1974, as amended, the Department of Housing and Urban Development (HUD), Office of Single-Family Housing, is modifying system of records, the Single-Family Mortgage Asset Recovery Technology (SMART) System. The modification will clarify the categories of system location, system manager, authority for maintenance, purpose of the system, record source categories, routine uses of records maintained in the system, storage, retention and disposal, safeguards.

DATES: Comments will be accepted on or before November 29, 2023. This proposed action will be effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number or by one of the following methods:

Federal e-Rulemaking Portal: http://www.regulations.gov. Follow the instructions provided on that site to submit comments electronically.

Fax: 202–619–8365.

Email: www.privacy@hud.gov.

Mail: Attention: Privacy Office; LaDonne White, Chief Privacy Officer; The Executive Secretariat; 451 Seventh Street SW, Room 10139; Washington, DC 20410–0001.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov.* including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: LaDonne White 451 Seventh Street SW, Room 10139; Washington, DC 20410–0001; telephone number 202–708–3054 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION: HUD Single Family Asset Management relies on the Single-Family Asset Recovery Technology (SMART) System to provide various loan servicing functions including generating payoffs and processing for HUD FHA Insured Title II forward Secretary held loans. HUD is publishing this revised notice to update system location, manager, purpose, categories, routine uses, storage, retention and disposal, safeguards to mirror updated information in the sections being modified. The revision of system records will have no unnecessary impact on the individual's privacy and updates follow the records collected.

1. Location-Added the new location of backup records.

2. System Manager-Identified the new system manager operating this system of records.

3. Purpose-Expanded to include detailed loan servicing information.

4. Record Source Categories-Updated to cover all electronic and manual record sources for internal and external systems to HUD.

5. Routine Uses-Amended to cover routine uses that are new, modified or removed.

a. Added Routine Use (1) to address disclosures to the National Archives and Records Administration, Office of Government Information Services, to review administrative agency policies, procedures in compliance with FOIA and to facilitate the resolution of disputes between individuals making FOIA requests and administrative agencies.

b. Added Routine Use (2) for disclosures made to congressional office from the record of an individual, in response to an inquiry from the congressional office completed at the request of that individual.

c. Added Routine Use (3) to cover contractors who require access to the system in order to perform an agency function.

d. Added Routine Use (4) to address disclosures for Federal agencies, non-Federal entities, their employees, agents (including contractors, their agents, or employees) for detecting, preventing improper payments, fraud, waste, and abuse in Federal programs.

e. Added Routine Use (5) for disclosures made to contractors, grantees, experts, consultants, Federal agencies, and non-Federal entities conducting research and statistical analysis on HUD programs.

f. Added Routine Use (6) to cover disclosures related to using new technology including system designs to improve overall program performance.

g. Added Routine Use (7) and (8) for disclosures made to agencies, entities, and persons to assist HUD in responding to alleged or confirmed breaches of system records or other Federal agencies where HUD determines information from system records is needed to assist the agency in responding to an alleged or confirmed breach.

h. Added Routine Use (9) to address disclosures to Federal, State, local, tribal, or other governmental agencies or multilateral governmental organizations in authority of investigating or prosecuting the violations of, or for enforcing or implementing, a criminal or civil statue, rule, regulation, order, or license.

i. Added Routine Use (10) covering disclosures related to any area of the Department of Justice or other Federal agency overseeing litigation or related proceedings.

j. Previously published Routine Uses (a) and (b) have been renumbered to (11) and (12), but otherwise remain unchanged.

k. Added a note to allow for disclosures pursuant to 5 U.S.C. 552a(b)(12) to cover consumer reporting agency related disclosures on attempts of the agency to collect claims owed on behalf of the government.

6. Storage-Simplified the information regarding storage.

7. Retention and Disposal-Added additional disposition details.

8. Safeguards- Included more detail on updates to safeguard procedures.

SYSTEM NAME AND NUMBER:

Single-Family Mortgage Asset Recovery Technology (SMART), HUD/HOU–58.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Digital records are maintained at the Amazon Web Services (AWS) Simple Technology Solutions Inc, 1775 I Street NW, Suite 1150, Washington, DC 2006–2402. Active paper records are kept at ISN Corporation, 2000 N Classen Blvd., Suite 3200, Oklahoma City, OK 73106.

SYSTEM MANAGER(S):

Office of Single-Family Housing, Julia Rogers, Director, National Servicing Center, 301 NW, 6th Street, Suite 200, Oklahoma City, OK 73102, Telephone Number (405) 609–8414.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 204, National Housing Act, 12 U.S.C. 1710(a).

PURPOSE(S) OF THE SYSTEM:

The Single Family Mortgage Asset Recovery Technology (SMART) System is a specialized servicing web-application that is used to service and track servicing activities for the Secretary Held portfolio including 235 insured, Asset Control Area Program (ACA), Emergency Home Loan Program (EHLP), Good Neighbor Next Door Program (GNND), Hope for Homeowners (H4H), Nehemiah Program, Partial Claim (PC), Purchase Money Mortgage (PMM). SMART provides automated business processes to perform comprehensive loan servicing for loan programs that are under the jurisdiction of the National Servicing Center.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Mortgagors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Full Name, Social Security Number, Date of Birth, Email work Address, Financial Information, Home Address, Phone Number, Spouse Name, Lender Loan Number, FHA Case Number.

RECORD SOURCE CATEGORIES:

Records are initiated from HUD employees and their contractors. Information is also received from Single

Family Insurance System (CLAIMS Subsystem), Asset Disposition and Management System, HUD FHA Resource Center Customer Relationship Management System (CRM).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

(1) To the National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures and compliance with the Freedom of Information Act (FOIA), and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

(2) To a congressional office from the record of an individual, in response to an inquiry from the congressional office made at the request of that individual.

(3) To contractors, grantees, experts, consultants and their agents, or others performing or working under a contract, service, grant, cooperative agreement, or other agreement with HUD, when necessary to accomplish an agency function related to a system of records. Disclosure requirements are limited to only those data elements considered relevant to accomplishing an agency function.

(4) To Federal agencies, non-Federal entities, their employees, and agents (including contractors, their agents or employees; employees or contractors of the agents or designated agents); or contractors, their employees or agents with whom HUD has a contract, service agreement, grant, cooperative agreement, or computer matching agreement for the purpose of: (1) detection, prevention, and recovery of improper payments; (2) detection and prevention of fraud, waste, and abuse in major Federal programs administered by a Federal agency or non-Federal entity; (3) detection of fraud, waste, and abuse by individuals in their operations and programs; or (4) for the purpose of establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefits programs or recouping payments or delinquent debts under such Federal benefits programs. Records under this routine use may be disclosed only to the extent that the information shared is necessary and relevant to verify pre-award and prepayment requirements prior to the release of Federal funds, prevent and recover improper payments for services rendered under programs of HUD or of those Federal agencies and non-Federal entities to which HUD provides information under this routine use.

(5) contractors, grantees, experts, consultants, Federal agencies, and non-Federal entities, including, but not limited to, State and local governments and other research institutions or their parties, and entities and their agents with whom HUD has a contract, service agreement, grant, cooperative agreement, or other agreement for the purposes of statistical analysis and research in support of program operations, management, performance monitoring, evaluation, risk management, and policy development, to otherwise support the Department's mission, or for other research and statistical purposes not otherwise prohibited by law or regulation. Records under this routine use may not be used in whole or in part to make decisions that affect the rights, benefits, or privileges of specific individuals. The results of the matched information may not be disclosed in identifiable form.

(6) To contractors, experts, and consultants with whom HUD has a contract, service agreement, assignment, or other agreement, when necessary, to utilize relevant data for the purpose of testing new technology and systems designed to enhance program operations and performance.

(7) To appropriate agencies, entities, and persons when (1) HUD suspects or has confirmed that there has been a breach of the system of records; (2) HUD has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HUD, the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HUD's efforts to respond to the suspected or confirmed breach to prevent, minimize, or remedy such harm.

(8) To another Federal agency or Federal entity, when HUD determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(9) To appropriate Federal, State, local, Tribal, or other governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where HUD determines that the information would assist in the enforcement of civil or criminal laws and when such records, either alone or in conjunction with other information, indicate a violation or potential violation of law.

(10) To any component of the Department of Justice or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when HUD determines that the use of such records is relevant and necessary to the litigation and when any of the following is a party to the litigation or have an interest in such litigation: (1) HUD, or any component thereof; or (2) any HUD employee in his or her official capacity; or (3) any HUD employee in his or her individual capacity where the Department of Justice or agency conducting the litigation has agreed to represent the employee; or (4) the United States, or any agency thereof, where HUD determines that litigation is likely to affect HUD or any of its components.

(11) To the U.S. Treasury for disbursements and adjustments.

(12) To the IRS for reporting of discharge indebtedness.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic and paper records.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by mortgagor name, FHA Case Number, or property address.

POLICIES AND PRACTICIES FOR RETENTION AND DISPOSAL OF RECORDS:

In accordance with HUD records disposition schedule 2225.6, Appendix 20. records are destroyed upon successful creation of the final document or file, or when no longer needed for business use, whichever is later. Backup and recovery digital media will be destroyed or otherwise rendered irrecoverable per NIST SP 800–88 ''Guidelines for Media Sanitization.'' GRS 5.2, Item 20, DAA–GRS2017–0003–0002. Temporary. Destroy upon verification of successful creation of the final document or file, or when no longer needed for business use, whichever is later.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Administrative Safeguards: When first gaining access to SMART and annually, all users must agree to the systems ''Rules of Behavior'' which specify handling of personal information and any physical records.

Technical Safeguards: Controls for the system include, but are not limited to, username identification, password protection, multi-factor authentication, firewalls, virtual private network, encryption, and is limited to authorized users.

Physical Safeguards: Controls to secure the data and protect paper records are maintained and locked in file cabinets. The original collateral documents (hard copy) are stored at the contractor's office site for all open loans and the closed documents are stored at a secured offsite document storage facility. All hard copy files are stored within a secured room within the contractor's secured office suite when not in use. Background screening, limited authorizations, and access, with access limited to authorized personnel and technical restraints employed regarding accessing the records, access to automated systems by authorized users by username and passwords.

RECORD ACCESS PROCEDURES:

Individuals requesting records of themselves should address written inquiries to the Department of Housing Urban and Development 451 7th Street SW, Washington, DC 20410–0001. For verification, individuals should provide their full name, current address, and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

CONTESTING RECORD PROCEDURES:

The HUD rule for contesting the content of any record pertaining to the individual by the individual concerned is published in 24 CFR 16.8 or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals requesting notification of records of themselves should address written inquiries to the Department of Housing Urban Development, 451 7th Street SW, Washington, DC 20410–0001. For verification purposes, individuals should provide their full name, office or organization where assigned, if applicable, and current address and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Docket No. FR–5386–N–05, 75 FR 34755, June 18, 2010.

LaDonne White,

Chief Privacy Officer, Office of Administration.

[FR Doc. 2023–23875 Filed 10–27–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R3–FAC–2023–0204; FRFR48120323YA0–XXX–FF03F00000; OMB Control Number 1018–0182]

Agency Information Collection Activities; Online Program Management System for Carbon Dioxide-Carp

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to renew an information collection, without change.

DATES: Interested persons are invited to submit comments on or before December 29, 2023.

ADDRESSES: Send your comments on the information collection request (ICR) by one of the following methods (please reference ''1018–0182'' in the subject line of your comments):

- *Internet (preferred): http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R3–FAC–2023–0204.
- *U.S. mail:* Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Madonna Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Lacey Act (Act, 18 U.S.C. 42) prohibits the importation of any animal deemed to be and prescribed by regulation to be injurious to:

- Human beings;
- The interests of agriculture, horticulture, and forestry; or
- Wildlife or the wildlife resources of the United States.

Implementation and enforcement of the Lacey Act is the responsibility of the Department of the Interior. The Service, in concert with our diverse partners, works to conserve, restore, and maintain the nation's fishery resources and aquatic ecosystems for the benefit of the American people, to include managing and controlling four invasive species of carp—bighead, black, grass, and silver—native to Asia. Under the authority of the Act, the Service listed bighead, black, and silver carp species as injurious wildlife to protect humans, native wildlife, and wildlife resources from the purposeful or accidental introduction of invasive carp into the nation's aquatic ecosystems.

The Service takes part in a broad, partner-driven approach to strategically control the movement of invasive carp. The spread of these invasive species in the nation's river systems threatens the conservation efforts conducted by our agency, our State partners, and other stakeholders, to promote self-sustaining aquatic resources and healthy aquatic ecosystems. In addition to widespread and longstanding ecological consequences, aquatic invasive species often result in significant economic losses and cost our nation's economy billions of dollars per year.

To effectively carry out our responsibilities under the Act and protect the aquatic resources of the United States, the Service, in collaboration with the U.S. Geological Survey, proposes to administer applications of Carbon Dioxide-Carp by registered management partners (applicators) and to collect information regarding the usage of Carbon Dioxide-Carp, an Environmental Protection Agency (EPA) registered product #6704–95, to control invasive carp. Carbon Dioxide-Carp is approved for use only by the Service, U.S. Geological Survey, U.S. Army Corps of Engineers, State natural resource managers, or persons under their direct supervision.

The Service will use the information collected to document the label requests, maintain inventory, and document application results of Carbon Dioxide-Carp as an EPA registered product. The Service proposes to collect information from applicators using the following five forms:

• *Form 3–2130: Report on Receipt of Label*—Applicators must apply for a label to attach to a treatment container of Carbon Dioxide-Carp prior to being able to legally apply it as an invasive carp deterrent or as an under-ice lethal control for aquatic nuisance species. This form collects the following information:

—Applicant's information, to include address, date of birth, contact number(s), email address, and relevant business information (if application is on behalf of a business, corporation, public agency, Tribe, or institution);
—Date of label receipt;
—Site of application, to include GPS location, approximate number of surface acres, and date of application;
—Label number; and
—Name and address of applicator.

• *Form 3–2163: Inventory Form for Use with Carbon Dioxide-Carp*—Registered applicators must maintain an accurate inventory of Carbon Dioxide-Carp for the duration of possession of the product label. This form collects the following information:

—Applicant's information, to include address, date of birth, contact number(s), email address, and relevant business information (if application is on behalf of a business, corporation, public agency, Tribe, or institution);
—Date of application;
—Amount of Carbon Dioxide-Carp applied (pounds);
—Label number;
—Label return date;
—Any adverse incident; and
—Name of applicator and affiliation.

• *Form 3–2164: Worksheet for Field Application Locations*—Applicators must complete Form 3–2164 for each application of Carbon Dioxide-Carp before the actual application. This form collects the following information:

—Applicant's information, to include address, date of birth, contact number(s), email address, and relevant business information (if application is on behalf of a business, corporation, public agency, Tribe, or institution);
—Site information, to include the name and address of the location; applicator name, address, telephone number, and email address; and the applicator's certification number; and
—Carbon Dioxide-Carp use information, to include estimated pounds of Carbon Dioxide-Carp needed, estimated dates of use, purpose, and a list of obtained permits.

• *Form 3–2191: Results Report Form*—Investigator must submit application results to the Service to document efficacy of the treatment and any possible adverse effects, as this data is required by the EPA to maintain product registration. This form collects the following information:

—Applicant's information, to include address, date of birth, contact number(s), email address, and relevant business information (if application is on behalf of a business, corporation, public agency, Tribe, or institution);
—Site information (to include GPS coordinates and city/county/state) and reporting individual; and
—Application information, to include total amount of Carbon Dioxide-Carp used (pounds), application date(s), adverse incident information (to include date reported to the U.S. Geological Survey), applicator name and label number, National Pollutant Discharge Elimination System Permit number, and other required permits and permit numbers.

• *Form 3–2541: 6(a)(2) Adverse Incident Report*—Investigator must submit application adverse results to the Service to document any irregularities in the application circumstances or adverse effects on non-target organisms. This form collects the following information:

—Administrative data, to include reporting and contact individual (if different), address and phone number, incident status, location and date of incident, when registrant became aware of incident, and whether incident was part of a larger study;
—Pesticide data, to include whether exposure was to concentrate prior to dilution;
—Incident circumstances, to include whether there is evidence that label directions were not followed, whether applicator is a certified pest control operator, type of exposure, incident site, situation, and brief description of habitat and incident circumstances; and
—Information involving fish, wildlife, plants, or other non-target organisms; species; symptoms or adverse effects; magnitude of the effects; and any explanatory or qualifying information surrounding the incident.

ePermits Initiative

We are exploring the feasibility of using the Service's new ''ePermits'' initiative, an automated permit application system that will allow the agency to move towards a streamlined permitting process to reduce public burden. The ePermits platform would automate the five forms associated with this proposed information collection. Public burden reduction is a priority for the Service, the Assistant Secretary for Fish and Wildlife and Parks, and senior leadership at the Department of the Interior. The intent of the ePermits initiative is to fully automate the permitting and reporting process to

improve the customer experience and to reduce time burden on respondents. This system enhances the user experience by allowing users to enter data from any device that has internet access, including personal computers, tablets, and smartphones. It will also link the permit applicant to the Pay.gov system for payment of any associated fees.

Title of Collection: Online Program Management System for Carbon Dioxide-Carp.

OMB Control Number: 1018–0182.

Form Numbers: Forms 3–2130, 3–2163, 3–2164, 3–2191, and 3–2541.

Type of Review: Extension of a currently approved information collection.

Respondents/Affected Public: State and Tribal governments.

Total Estimated Number of Annual Respondents: 42.

Total Estimated Number of Annual Responses: 42.

Estimated Completion Time per Response: Varies from 12 minutes to 1 hour, depending on activity.

Total Estimated Number of Annual Burden Hours: 10.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $45,000.00. We estimate that each of the anticipated 10 annual respondents would pay an EPA Maintenance fee of $400, a State registration fee of $252; and an administrative fee of $848 (totaling $15,000 ($1,500 × 10 respondents)). Each respondent will also incur a one-time startup cost of $3,000 (totaling $30,000 ($3,000 × 10 respondents)).

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2023–23893 Filed 10–27–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[245A2100DD/AAKC001030/A0A501010.999900; OMB Control Number 1076–0195]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Trust Land Mortgage Lender Checklists

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Affairs (BIA) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before November 29, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection request (ICR) should be sent within 30 days of publication of this notice to the Office of Information and Regulatory Affairs (OIRA) through *https://www.reginfo.gov/public/do/PRA/icrPublicCommentRequest?ref_nbr=202212-1076-002* or by visiting *https://www.reginfo.gov/public/do/PRAMain* and selecting ''Currently under Review—Open for Public Comments'' and then scrolling down to the ''Department of the Interior.''

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Steven Mullen, Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative Action—Indian Affairs, U.S. Department of the Interior, 1001 Indian School Road NW, Suite 229, Albuquerque, New Mexico 87104; *comments@bia.gov;* (202) 924–2650. 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. You may also view the ICR at *https://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=1076-0195*.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on January 5, 2023 (88 FR 879). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This information collection is authorized under 25 U.S.C. 5135; 70 Stat. 62 and 25 CFR 152.34 which provides individual Indians owning an individual tract of trust land the ability to mortgage their land for the purpose of home acquisition and construction, home improvements, and economic development. The BIA is required to review the trust mortgage application for conformity to statutes, policies, and regulations. Mortgage documents submitted to BIA from the lending

institutions will assist BIA staff in their analysis to approve or disapprove a trust land mortgage application request.

Title of Collection: Trust Land Mortgage Lender Checklists.

OMB Control Number: 1076–0195.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals/households, Tribal governments.

Total Estimated Number of Annual Respondents: 56.

Total Estimated Number of Annual Responses: 131.

Estimated Completion Time per Response: Varies from 20 to 40 hours.

Total Estimated Number of Annual Burden Hours: 3,840.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: $0.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Steven Mullen,

Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2023–23823 Filed 10–27–23; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_CO_FRN_MO4500175832]

Notice of Filing of Plats of Survey, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management (BLM), Colorado State Office, Lakewood, Colorado, 30 calendar days from the date of this publication. The surveys, which were executed at the request of the U.S. Forest Service, the BLM, and the U.S. National Park Service, are necessary for the management of these lands.

DATES: Unless there are protests of this action, the plats described in this notice will be filed on November 29, 2023.

ADDRESSES: You may submit written protests to the BLM Colorado State Office, Cadastral Survey, P.O. Box 151029, Lakewood, CO 80215.

FOR FURTHER INFORMATION CONTACT: David W. Ginther, Chief Cadastral Surveyor for Colorado, telephone: (970) 826–5064; email: *dginther@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The plat and field notes of the dependent resurvey in Township 7 North, Range 71 West, Sixth Principal Meridian, Colorado, were accepted on July 14, 2023.

The plat and field notes of the dependent resurvey and survey in Township 23 South, Range 44 West, Sixth Principal Meridian, Colorado, were accepted on August 24, 2023.

The plat, in 2 sheets, and field notes of the dependent resurvey and survey in Township 16 South, Range 71 West, Sixth Principal Meridian, Colorado, were accepted on September 25, 2023.

The plat and field notes of the dependent resurvey, corrective dependent resurvey, and subdivision of sections 24 and 25 in partially surveyed Township 19 South, Range 73 West, Sixth Principal Meridian, Colorado, were accepted on September 28, 2023.

The plat and field notes of the dependent resurvey and subdivision of section 11 in Township 12 South, Range 73 West, Sixth Principal Meridian, Colorado, were accepted on October 3, 2023.

A person or party who wishes to protest any of the above surveys must file a written notice of protest within 30 calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. A statement of reasons for the protest may be filed with the notice of protest and must be filed within 30 calendar days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved.

Before including your address, phone number, email address, or other personal identifying information in your protest, please be aware that your entire protest, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 U.S.C. chapter 3)

David W. Ginther,

Chief Cadastral Surveyor.

[FR Doc. 2023–23846 Filed 10–27–23; 8:45 am]

BILLING CODE 4331–16–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR957000.L1440000.BJ0000.245; BLM_OR_FRN_MO4500176005]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management (BLM), Oregon State Office, Portland, Oregon, 30 calendar days from the date of this publication.

DATES: Protests must be received by the BLM prior to the scheduled date of official filing, November 29, 2023.

ADDRESSES: A copy of the plats may be obtained from the Public Room at the Bureau of Land Management, Oregon State Office, 1220 SW 3rd Avenue, Portland, Oregon 97204, upon required payment. The plats may be viewed at this location at no cost.

FOR FURTHER INFORMATION CONTACT: Robert Femling, telephone: (503) 808–6633, email: *rfemling@blm.gov,* Branch of Geographic Sciences, Bureau of Land Management, 1220 SW 3rd Avenue, Portland, Oregon 97204. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339 to contact Mr. Femling during normal business hours. The service is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management, Oregon State Office, Portland, Oregon:

Willamette Meridian, Oregon

T. 38 S, R. 6 W, accepted September 15, 2023
T. 33 S, R. 2 W, accepted September 15, 2023
T. 28 S, R. 10 W, accepted September 15, 2023

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 Chief Cadastral Surveyor for Oregon/Washington, Bureau of Land Management. The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. The notice of protest must be filed before the scheduled date of official filing for the plat(s) of survey being protested. Any notice of protest filed after the scheduled date of official filing will be untimely and will not be considered. A notice of protest is considered filed on the date it is received by the Chief Cadastral Surveyor for Oregon/Washington 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 Chief Cadastral Surveyor for Oregon/Washington 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 next business day following dismissal or resolution of all protests of the plat.

Before including your address, phone number, email address, or other personal identifying information in a notice of protest or statement of reasons, you should be aware that the documents you submit—including your personal identifying information—may be made publicly available in their entirety at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 U.S.C. chapter 3.)

Robert Femling,

Chief Cadastral Surveyor of Oregon/Washington.

[FR Doc. 2023–23863 Filed 10–27–23; 8:45 am]

BILLING CODE 4331–24–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1658 (Preliminary)]

Truck and Bus Tires From Thailand; Institution of Antidumping Duty Investigation and Scheduling of Preliminary Phase Investigation

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping duty investigation No. 731–TA–1658 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of truck and bus tires from Thailand, provided for in subheadings 4011.20.10 and 4011.20.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in antidumping duty investigations in 45 days, or in this case by December 1, 2023. The Commission's views must be transmitted to Commerce within five business days thereafter, or by December 8, 2023.

DATES: October 17, 2023.

FOR FURTHER INFORMATION CONTACT: Peter Stebbins (202–205–2039), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), in response to a petition filed on October 17, 2023, by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC, Pittsburgh, Pennsylvania.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.— The Office of Investigations will hold a staff conference in connection with the preliminary phase of this investigation beginning at 9:30 a.m. on November 7, 2023. Requests to appear at the conference should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before 5:15 p.m. on November 3, 2023. Please provide an email address for each conference participant in the email. Information on conference procedures, format, and participation will be available on the Commission's Public

Calendar. A nonparty who has testimony that may aid the Commission's deliberations may request permission to participate by submitting a short statement.

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.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before 5:15 p.m. on November 13, 2023, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties shall file written testimony and supplementary material in connection with their presentation at the conference no later than noon on November 6, 2023. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this investigation must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during 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 related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: October 24, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–23800 Filed 10–27–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–860 (Fourth Review)]

Tin- and Chromium-Coated Steel Sheet From Japan; Scheduling of a Full Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty order on tin- and chromium-coated steel sheet from Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: October 25, 2023.

FOR FURTHER INFORMATION CONTACT: Alejandro Orozco (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On September 5, 2023, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review should proceed (88 FR 64464, September 19, 2023); accordingly, a full review is being scheduled pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's website.

Participation in the review and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

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.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the

Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the review will be placed in the nonpublic record on March 19, 2024, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold an in-person hearing in connection with the review beginning at 9:30 a.m. on April 9, 2024. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before 5:15 p.m. on March 29, 2024. Any requests to appear as a witness via videoconference must be included with your request to appear. Requests to appear via videoconference must include a statement explaining why the witness cannot appear in person; the Chairman, or other person designated to conduct the review, may in their discretion for good cause shown, grant such a request. Requests to appear as remote witness due to illness or a positive COVID–19 test result may be submitted by 3:00 p.m. the business day prior to the hearing. Further information about participation in the hearing will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html.*

A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference, if deemed necessary, to be held at 9:30 a.m. on April 8, 2024. Parties shall file and serve written testimony and presentation slides in connection with their presentation at the hearing by no later than 4:00 p.m. on April 8, 2024. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is 5:15 p.m. on March 28, 2024. Parties shall also file written testimony in connection with their presentation at the hearing, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is 5:15 p.m. on April 16, 2024. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before 5:15 p.m. on April 16, 2024. On May 3, 2024, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before 5:15 p.m. on May 7, 2024, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: October 25, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–23887 Filed 10–27–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the Compact Council for the National Crime Prevention and Privacy Compact

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce a meeting of the National Crime Prevention and Privacy Compact Council (Council) created by the National Crime Prevention and Privacy Compact Act of 1998 (Compact).

DATES: The Council will meet in open session from 9 a.m. (EST) until 5:30 p.m. (EST) on November 29, 2023.

ADDRESSES: The meeting will take place at the Marriott Savannah Riverfront, 100 General McIntosh Boulevard, Savannah, GA 31401.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Ms. Chasity S. Anderson, FBI Compact Officer, Biometric Technology Center, 1000 Custer Hollow Road, Clarksburg, West Virginia, 26306, telephone 304–625–2803.

SUPPLEMENTARY INFORMATION: Thus far, the Federal Government and 35 states are parties to the Compact which governs the exchange of criminal history records for licensing, employment, immigration and naturalization matters, and similar purposes. The Compact also provides a legal framework for the establishment of a cooperative federal-state system to exchange such records.

The United States Attorney General appointed 15 persons from state and federal agencies to serve on the Council. The Council will prescribe system rules and procedures for the effective and proper operation of the Interstate Identification Index system for noncriminal justice purposes.

Matters for discussion are expected to include:

(1) Proposed Changes to the Security and Management Control Outsourcing Standard for Channeling

(2) Obtaining an Identity History Summary in Extensible Markup Language Format for Traditional Electronic Biometric Transmission Standard Tenprint Transactions

(3) Modernization of the *CJIS Security Policy*

The meeting will be conducted with a blended participation option. The meeting will be open to the public on a first-come, first-serve basis. Virtual participation options are available. To

register for participation, individuals must provide their name, city, state, phone, email address and agency/organization to *agmu@leo.gov* by November 1, 2023. Individuals registering for participation must note their preference of in-person or virtual participation. Information regarding virtual participation will be provided prior to the meeting to registered individuals attending virtually.

The federal government is currently operating on a continuing resolution that expires at 11:59 p.m. on November 17, 2023. Should any lapse in its annual appropriations continue through November 21, 2023, the Council will be unable to conduct its business in person. If this occurs, a virtual meeting with a limited agenda will be held on November 29, 2023, beginning at 1 p.m. (EST). All individuals registered by the deadline to attend the meeting will be provided the virtual meeting invitation.

Any member of the public wishing to file a written statement with the Council or wishing to address this session of the Council should notify the FBI Compact Officer, Ms. Chasity S. Anderson at *compactoffice@fbi.gov,* at least 7 days prior to the start of the session. The notification should contain the individual's name and corporate designation, consumer affiliation, or government designation, along with a short statement describing the topic to be addressed and the time needed for the presentation. Individuals will ordinarily be allowed up to 15 minutes to present a topic. The Compact Officer will compile all requests and submit to the Compact Council for consideration.

Individuals requiring special accommodations should contact Ms. Anderson at *compactoffice@fbi.gov* by no later than November 15, 2023. Please note all personal registration information may be made publicly available through a Freedom of Information Act request.

Chasity S. Anderson,

FBI Compact Officer, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 2023–23888 Filed 10–27–23; 8:45 am]

BILLING CODE 4410–02–P

OFFICE OF MANAGEMENT AND BUDGET

Draft Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance With the Unfunded Mandates Reform Act

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of availability and request for comments.

SUMMARY: The Office of Management and Budget (OMB) requests comments on its Draft Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act, available at: *https://www.whitehouse.gov/omb/information-regulatory-affairs/reports/.* The Draft Report is divided into two parts, the first of which is further divided into several chapters. Part I's Chapter I examines the benefits and costs of major Federal regulations issued in fiscal years 2020, 2021 and 2022. Chapter II discusses regulatory impacts on State, Local, and tribal governments, small business, wages and employment, and economic growth. Chapter III offers recommendations for regulatory reform. Part II summarizes agency compliance with the Unfunded Mandates Reform Act. OMB requests that comments be submitted electronically to OMB by December 15, 2023, through *www.regulations.gov* using Docket ID OMB–2023–0019.

DATES: To ensure consideration of comments as OMB prepares this Draft Report for submission to Congress, comments must be in writing and received by December 15, 2023.

ADDRESSES: Submit comments by one of the following methods:

- *www.regulations.gov:* Direct comments to Docket ID OMB–2023–0019.
- *Fax:* (202) 395–7285.
- *Mail:* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 9th Floor, 725 17th Street NW, Washington, DC 20503. To ensure that your comments are received timely, we recommend that comments on this draft report be electronically submitted.

Privacy Act Statement: Submission of comments is voluntary. The information received will be used to inform sound decision making. Please note that all comments submitted in response to this notice may be posted or released in their entirety, including any personal and business confidential information provided. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. The OMB System of Records Notice, OMB Public Input System of Records, OMB/INPUT/01, includes a list of routine uses associated with the collection of this information. The *www.regulations.gov* website is an ''anonymous access'' system, which means OMB will not know your identity or contact information unless you provide it in the body of your comment.

FOR FURTHER INFORMATION CONTACT: *MBX.OMB.OIRA.BC_Report_Questions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Congress directed the Office of Management and Budget to prepare an annual Report to Congress on the Benefits and Costs of Federal Regulations. Specifically, Section 624 of Title IV of the FY 2001 Treasury and General Government Appropriations Act, also known as the ''Regulatory Right-to-Know Act'' (the Act), requires OMB to submit a report on the benefits and costs of Federal regulations together with recommendations for reform. The Act states that the report should contain estimates of the costs and benefits of regulations in the aggregate, by agency and agency program, and by major rule, as well as an analysis of impacts of Federal regulation on State, local, and tribal governments, small businesses, wages, and economic growth. The Act also states that the report should be subject to notice and comment and peer review. OIRA requests public comments on the report in general, including its substance and format; how to improve transparency and accountability with respect to the effects of regulation; and the various recommendations for reform.

Richard L. Revesz,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 2023–23725 Filed 10–27–23; 8:45 am]

BILLING CODE 3110–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–1162; NRC–2021–0120]

Split Rock, Wyoming Uranium Mill Tailings Radiation Control Act Title II Disposal Site; Jeffrey City, Wyoming

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) reviewed a Long-Term Surveillance Plan (LTSP) for the Split Rock, Wyoming Uranium Mill Tailings Radiation Control Act (UMTRCA) Title II Disposal Site, Jeffrey City, Wyoming submitted by the U.S. Department of Energy (DOE), by letter dated April 29, 2020. The NRC staff prepared an environmental assessment (EA) for this LTSP in accordance with its regulations. Based on the EA, the NRC concluded that a finding of no significant impact (FONSI) is appropriate. The NRC is also conducting a safety evaluation of the proposed license transfer.

DATES: The EA and FONSI referenced in this document are available on October 30, 2023.

ADDRESSES: Please refer to Docket ID NRC–2021–0120 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0120. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jill Caverly, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7674, email: *Jill.Caverly@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is evaluating the LTSP for the Split Rock, Wyoming UMTRCA Title II Disposal Site submitted by the DOE for the long-term care and custodianship of the former uranium mill tailings site. The DOE submitted its request by letter dated April 29, 2020, (ADAMS Accession No. ML20121A280) and amended on August 11, 2023 (ADAMS Package Accession No. ML23223A152). The LTSP demonstrates the DOE responsibilities as the long-term custodian of the site, fulfilling its requirements associated with the general license under part 40 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Source Material.''

In accordance with 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' which implements the National Environmental Policy Act of 1969 as amended, the NRC staff's environmental review of the LTSP is documented in its EA (ADAMS Accession No. ML23236A452). The purpose of the EA is to assess the potential environmental impacts of the activities included in the long-term care of the Split Rock, Wyoming UMTRCA Title II disposal site. The NRC is also conducting a safety evaluation of the LTSP, which will be documented in a separate technical evaluation report (TER).

The long-term surveillance and maintenance program presented in the LTSP entails performing the following activities at the site: annual site inspection and reporting, annual ground water and surface water monitoring and reporting, and minor maintenance. The NRC will approve transfer of the site to DOE under the general licensing authority of 10 CFR part 40, following publication of the FONSI in the **Federal Register**, the EA, and the TER.

II. Final Environmental Assessment Summary

The Split Rock, Wyoming UMTRCA Title II disposal site is currently under a specific license with Western Nuclear Inc. (WNI) for the possession and storage of source or byproduct material from processing and extraction activities associated with uranium milling and as defined in 10 CFR part 40. Past activities include disposal, decommissioning, and reclamation activities at the site. Once those activities are complete, the license must be transferred to the long-term custodian under a general license. Under the UMTRCA Title II, a general license is issued for the custody and long-term care, including monitoring, maintenance, emergency measures necessary to protect the public health and safety, and other actions necessary to comply with site closure under Title II of UMTRCA. The long-term custodian will be the DOE.

The purpose of the LTSP is to establish the parameters of the long-term custodian's maintenance and surveillance of the site, consistent with 10 CFR 40.28, to demonstrate and ensure that uranium and thorium mill tailings disposal sites will be cared for in a manner that protects the public health, safety, and environment after closure. The DOE proposed an LTSP for the Split Rock, Wyoming UMTRCA Title II disposal site and requested NRC review and approval. The NRC considered the proposed action and the no-action alternative of denying the LTSP and transfer of the site to a general license. The results of the NRC's environmental review can be found in the final EA (ADAMS Accession No. ML23236A452). The NRC staff performed its environmental review in accordance with the requirements in 10 CFR part 51. In conducting the environmental review, the NRC contacted the Wyoming State Historic Preservation office (ADAMS Accession No. ML21056A423), and seventeen Native American Tribes (ADAMS Accession No. ML20329A081) and ran a query using the U.S. Fish and Wildlife Service's Information for Planning and Consultation database (ADAMS Accession No. ML21047A315).

If the NRC approves the LTSP and concurs with Wyoming's termination of WNI's radioactive material license (WYSUA–56), the site will be transferred to an NRC general license for long-term custody (10 CFR 40.28(b)). Concurrent with this action, the WNI's deed and title to the site within the long-term site boundary will be transferred to the DOE. The remaining balance of the property is federally owned or privately held and under institutional control restrictions. Disposal structures (*i.e.,* the disposal cell and its associated surface water diversion structures) are designed to last ''for up to 1,000 years, to the extent reasonably achievable, and, in any case, for at least 200 years'' (10 CFR part 40, appendix A, ''Criteria Relating to the Operation of Uranium Mills and the Disposition of Tailings or Wastes

Produced by the Extraction or Concentration of Source Material from Ores Processed Primarily for Their Source Material Content,'' Criterion 6), in addition, there is no termination of the general license for the DOE's long-term custody of the site (10 CFR 40.28(b)). Representatives of the NRC must be guaranteed permanent right-of-entry for periodic site inspections. Perpetual access to the site is gained by a local county road.

To meet the NRC's license requirements at 10 CFR 40.28 and 10 CFR part 40, appendix A, criterion 12, the DOE as long-term custodian must, at a minimum, fulfill the following requirements:

- annual site inspection,
- annual inspection report,
- follow-up inspections and reports, as necessary,
- site maintenance, as necessary,
- emergency measures, and,
- environmental monitoring.

III. Finding of No Significant Impact

Based on its review of the proposed action in the EA, in accordance with the requirements of 10 CFR part 51, the NRC staff determined that approval of the LTSP for the Split Rock, Wyoming UMTRCA Title II disposal site authorizing long-term surveillance activities, will not significantly affect the quality of the human environment. The proposed action would not result in any new construction or expansion of the existing footprint beyond the area previously disturbed and approved. No significant radiological or nonradiological impacts are expected from the long-term surveillance and maintenance. The proposed action will not affect potentially eligible historic properties if any are present. Therefore, the NRC staff determined that pursuant to 10 CFR 51.31, preparation of an environmental impact statement is not required for the proposed action, and pursuant to 10 CFR 51.32, a FONSI is appropriate.

Dated: October 24, 2023.

For the Nuclear Regulatory Commission.

John M. Moses,

Deputy Director, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 2023–23806 Filed 10–27–23; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee Virtual Public Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act, notice is hereby given that a virtual meeting of the Federal Prevailing Rate Advisory Committee will be held on Thursday, November 16, 2023. There will be no in-person gathering for this meeting.

DATES: The virtual meeting will be held on November 16, 2023, beginning at 10 a.m. (ET).

ADDRESSES: The meeting will convene virtually.

FOR FURTHER INFORMATION CONTACT: Ana Paunoiu, 202–606–2858, or email *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal prevailing rate employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public. Reports for calendar years 2008 to 2022 are posted at *http://www.opm.gov/fprac.* Previous reports are also available, upon written request to the Committee.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee at Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 7H31, 1900 E Street NW, Washington, DC 20415, (202) 606–2858.

This meeting is open to the public, with an audio option for listening. This notice sets forth the agenda for the meeting and the participation guidelines.

Meeting Agenda. The tentative agenda for this meeting includes the following Federal Wage System items:

- The definition of Monroe County, PA
- The definition of San Joaquin County, CA
- The definition of the Salinas-Monterey, CA, wage area
- The definition of the Puerto Rico wage area

Public Participation: The November 16, 2023 meeting of the Federal Prevailing Rate Advisory Committee is open to the public through advance registration. Public participation is available for the meeting. All individuals who plan to attend the virtual public meeting to listen must register by sending an email to *pay-leave-policy@opm.gov* with the subject line ''November 16, 2023'' no later than Tuesday, November 14, 2023.

The following information must be provided when registering:

- Name.
- Agency and duty station.
- Email address.
- Your topic of interest.

Members of the press, in addition to registering for this event, must also RSVP to *media@opm.gov* by November 14, 2023.

A confirmation email will be sent upon receipt of the registration. Audio teleconference information for participation will be sent to registrants the morning of the virtual meeting.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2023–23837 Filed 10–27–23; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35040; 812–15443]

Eaton Vance Floating-Rate Opportunities Fund and Eaton Vance Management

October 25, 2023.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(a)(2), 18(c) and 18(i) of the Act, under sections 6(c) and 23(c) of the Act for an exemption from rule 23c–3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end investment companies to issue multiple classes of shares and to impose asset-based distribution and/or service fees and early withdrawal charges.

APPLICANTS: Eaton Vance Floating-Rate Opportunities Fund and Eaton Vance Management.

FILING DATES: The application was filed on March 15, 2023, and amended on April 11, 2023 and August 18, 2023.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on November 20, 2023, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Deidre E. Walsh, Eaton Vance Management, *dwalsh@eatonvance.com;* with a copy to Sarah Clinton, Ropes & Gray LLP, *sarah.clinton@ropesgray.com.*

FOR FURTHER INFORMATION CONTACT: Adam Large, Senior Special Counsel, at (202) 551–7358 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' amended application, dated August 18, 2023, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–23876 Filed 10–27–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98790; File No. SR–ICEEU–2023–022]

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, Relating to Amendments to the Clearing Membership Policy and Clearing Membership Procedures

October 24, 2023.

I. Introduction

On August 8, 2023, ICE Clear Europe Limited (''ICEEU'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify its Clearing Membership Policy (''Policy'') and Clearing Membership Procedures (''Procedures''). On August 22, 2023, ICE Clear Europe filed Amendment No. 1 to the proposed rule change to make certain changes to the Exhibits 5A and 5B.[3] Notice of the proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on August 29, 2023.[4] The Commission has not received any comments on the proposed rule change, as modified by Amendment No. 1 (hereinafter ''Proposed Rule Change''). For the reasons discussed below, the Commission is approving the Proposed Rule Change.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 amends the Exhibit 5A and Exhibit 5B to correctly reflect the addition of the Document Handling subsection to each document's Table of Contents. The proposed rule change includes an Exhibit 4A and Exhibit 4B. Exhibit 4A shows the change that Amendment No. 1 makes to Exhibit 5A, and Exhibit 4B does the same with respect to Exhibit 5B.

[4] Securities Exchange Act Release No. 98207 (August 23, 2023), 88 FR 59547 (August 29, 2023) (File No. SR–ICEEU–2023–022) (''Notice'').

[5] Capitalized terms not otherwise defined herein have the meanings assigned to them in the Policy or the Procedures or, if not defined therein, ICE Clear Europe's Clearing Rules.

II. Description of the Proposed Rule Change

ICEEU is registered with the Commission as a clearing agency for the purpose of clearing security-based swaps. In its role as a clearing agency for clearing security-based swaps, ICEEU provides services to its Clearing Members. ICEEU's Clearing Members enter into a Clearing Membership Agreement with ICEEU and are admitted as clearing members of ICEEU under Part 2 of ICEEU's clearing rules.[6]

As a result of its relationship with its Clearing Members, ICEEU faces a number of risks. For example, ICEEU's Clearing Members may not meet membership criteria which ultimately could increase the chances of both a Clearing Member defaulting and ICEEU needing to use mutualized funds.[7] ICEEU manages these risks, and relationships with its Clearing Members, through the Policy and the Procedures. The Policy describes ICEEU's membership criteria and related processes for assessing applicants for membership, on-going monitoring of its Clearing Members, and termination of its Clearing Members. The Procedures in turn provide additional detail as to how ICE Clear Europe applies its policies for reviewing applications for clearing membership, variations of permissions for Clearing Members, ongoing monitoring of Clearing Members, and termination of clearing membership.[8]

Through the Proposed Rule Change, ICEEU proposes to make changes to both the Policy and the Procedures.[9] These proposed changes correct an improper reference to model documents; clarify that clearing members must provide notice of certain situations; update sections on monitoring membership criteria; update sections on document governance; update the Procedures' clearing membership application process; and clarify that ICEEU may take certain steps in its absolute discretion.

1. Correction of Improper Reference to Model Documents in the Policy

The current Policy notes that procedural aspects and relevant

[6] The Clearing Membership Agreement is an agreement between ICEEU and a Clearing Member under which the Clearing House agrees to provide clearing in respect of Contracts to that Clearing Member and that Clearing Member agrees to be bound by and subject to ICEEU's Clearing Rules. ICE Clear Europe Clearing Rule 101.

[7] Clearing Membership Policy 2.1.

[8] Securities Exchange Act Release No. 93178 (Sept. 29, 2021), 86 FR 55045, 55046 (Oct. 5, 2021) (File No. SR–ICEEU–2021–014).

[9] In addition to the changes described below, ICEEU proposes various non-substantive changes to the Policy and Procedures.

parameters related to the Policy are set out in the corresponding procedures and model documents. However, Policy parameters are set forth in parameter documents, not model documents.[10] Therefore the Proposed Rule Change would remove the reference to model documents and state instead that procedural aspects and relevant parameters related to the Policy are set out in the corresponding procedures and parameter documents respectively.

2. Requiring Clearing Members To Provide Certain Notifications in the Policy and Procedures

In the ''Objective'' section of the current Policy, ICEEU notes that it achieves the objectives of the Policy by, among other things, ''includ[ing] relevant notifications to ensure that Clearing Members'' promptly notify ICEEU of certain changes that could impact their ability to meet ICEEU's membership criteria. The ''Objective'' section of the current Procedures includes similar language. The Proposed Rule Change would change this language in both the Policy and the Procedures to specify that ICEEU achieves the objectives of the Policy and Procedures by, among other things, ''requir[ing]'' that Clearing Members promptly notify ICEEU of any changes to their business which may affect their ability to meet ICEEU's membership criteria.[11]

3. Monitoring of Membership Criteria in the Policy

The current Policy states that in order to monitor Clearing Members' on-going adherence to the membership criteria, ICEEU carries out periodic in-depth counterparty reviews; undertakes a quarterly review of financial position using Audited Annual Accounts and quarterly financial information; updates its Counterparty Rating System on a quarterly basis; maintains a Watch List; requires Clearing Members to complete an Annual Member Return; and monitors operational matters daily, including, for example, margin calls and end-of-day price submissions. ICEEU proposes to remove and consolidate much of this text. The Policy as revised would state that in order to monitor Clearing Members' on-going adherence to the membership criteria, ICEEU carries out periodic in-depth counterparty reviews; undertakes ongoing monitoring, which consists of continuous monitoring and additional trigger-based reviews, including relating to credit and AML/KYC risk and to daily operational matters (such as margin calls); and requires Clearing Members to complete an Annual Member Return.

ICEEU proposes to remove the text discussing quarterly review of financial position through Audited Annual Accounts and financial information, updates to its Counter Party Rating System done quarterly, and the requirement to maintain a Watch List because these subjects relate to credit issues that are covered in its Counterparty Credit Risk Policy and Procedures.[12] Given the deletion of this text, ICEEU proposes to remove the sentence noting that information on monitoring is available in the Clearing Membership Procedures and the Counterparty Credit Risk Policy because ICEEU believes this cross reference to support now-deleted references would no longer be necessary.[13] Finally, ICEEU proposes deleting the sentence that provides that ICEEU monitors a number of specific operational matters daily because it would be replaced with the text noting that ICEEU undertakes ongoing monitoring.

4. Document Governance in the Policy and Procedures

The Proposed Rule Change would update the Document Governance and Exception Handling sections of both the Policy and the Procedures to make them consistent with similar document governance provisions in other ICEEU policies.[14] The updates would specify that the scope of the document review encompasses, at a minimum, regulatory compliance, documentation and purpose, implementation, use, and open items from previous validations or reviews (where appropriate). The Proposed Rule Change would also add text identifying the document owner or relevant staff as the individuals responsible for conducting document reviews to ensure they are updated and reviewed in accordance with the internal governance processes. The changes would also specify that the head of the department (or their delegate) and the Chief Risk Officer (or their delegate) provide approval for document reviews and that, in some circumstances, the document review findings are reported to the Model Oversight Committee, but outside of those circumstances, the document review's results, including any findings, are reported to the Executive Risk Committee along with the priority of findings, proposed remediations, and target due date to remediate the findings. The updates also would provide that it is the document owner's responsibility to address any findings, complete internal governance, and, if necessary, obtain regulatory approvals before the subsequent annual review is due. Finally, the proposed changes would note that changes to the Policy and Procedures must be approved in accordance with ICEEU's governance process and will take effect after completion of all necessary internal and regulatory approvals.

5. Clearing Membership Procedures

The Proposed Rule Change would amend the Clearing Membership Procedures to make certain clarifications and updates. One proposed change would clarify that applicants must provide sufficient evidence, details, and information to ICEEU as required by the Rules, as opposed to sufficient evidence, details, or information.[15] Another adds text indicating that the membership team will ensure that all Applicants are added to the schedule of insured entities by the ICE Group insurer. The Proposed Rule Change would also delete a provision noting that after approval of an application by the Executive Risk Committee, the relevant Product Risk Committees would be notified of a new application for clearing membership. ICEEU believes that it is unnecessary to notify the Product Risk Committees because those committees' duties and functions are not implicated by a new member being admitted.[16] ICEEU's proposed amendments would also clarify that ICEEU issues a Circular confirming approval of a Clearing Member once their application is approved and move a clause indicating that Clearing Members are required to respond to additional information requests in a timely manner statement to a standalone sentence. ICEEU believes stating this requirement in a standalone sentence makes the information clearer.[17]

6. ICEEU's Absolute Discretion in the Procedures

Throughout the Procedures, ICEEU proposes to add the phrase ''in its absolute discretion'' in connection with

[10] Notice, 88 FR at 59548.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.* For example, ICEEU recently amended its Recovery Plan and Outsourcing Policy to make changes similar to those now proposed. *See* Securities Exchange Act Release No. 98337 (Sept. 8, 2023), 88 FR 63149, 63154–55 (Sept. 14, 2023) (File No. SR–ICEEU–2023–020) (Recovery Plan); Securities Exchange Act Release No. 98387 (Sept. 14, 2023), 88 FR 64953, 64955 (Sept. 20, 2023) (File No. SR–ICEEU–2023–018) (Outsourcing Policy).

[15] Notice, 88 FR at 59548.

[16] *Id.*

[17] *Id.*

certain actions described in the Procedures. Specifically, ICEEU's proposed changes note that ICEEU has absolute discretion to take certain actions with respect to its minimum capital requirements, standards and characteristics of subordinated loans, the acceptability of a Controller Guarantee, cash or collateral requirements, and its guaranty fund. ICEEU also proposes changes making clear that it defines a maximum period between in-depth counterparty reviews and a threshold for following up with the Clearing Member regarding negative changes to its financial condition in its absolute discretion. ICEEU believes that these amendments do not change its existing authority, but more explicitly state the scope of its discretion.[18]

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act requires the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization.[19] For the reasons given below, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act[20] and Rules 17Ad–22(e)(2)(i), (e)(2)(v),[21] and (e)(18).[22]

A. Consistency With Section 17A(b)(3)(F) of the Act

Under Section 17A(b)(3)(F) of the Act, ICEEU's rules, among other things, must be ''designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible . . . and, in general, to protect investors and the public interest . . . .'' [23] Based on its review of the record, and for the reasons discussed below, the Commission concludes that ICEEU's Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act.

As noted above, ICEEU faces a number of risks as a result of its relationship with its Clearing Members. These risks include operational, default, and other risks that could impact or threaten ICEEU's ability to clear and settle transactions, safeguard securities and funds which are in its possession or control or for which it is responsible, or otherwise protect investors and the public interest. ICEEU manages these risks through, among other things, the Policy and Procedures. Therefore, improving or enhancing the Policy and Procedures likewise improves or enhances ICEEU's ability to manage or mitigate the risks it faces as a result of its relationship with its Clearing Members.

As discussed above, the Proposed Rule Change would enhance the Policy and Procedures in a number of ways, including clarifying certain provisions, highlighting certain important information, removing incorrect or duplicative information, and ensuring the Policy and Procedures are consistent with each other and with ICEEU's other policies and procedures. For example, the Proposed Rule Change would clarify in both the Policy and Procedures that Clearing Members must promptly notify ICEEU of any changes to their business which may impact their ability to meet membership criteria. Additionally, the Proposed Rule Change would revise the Procedures to clarify that Clearing Membership applicants must provide sufficient evidence, details, and information to ICEEU as required by the Rules, that ICEEU will issue a Circular confirming approval of a Clearing Member once its membership application is approved, that Clearing Members must respond to information requests from ICEEU in a timely manner, and that ICEEU has absolute discretion to take certain steps.[24] Similarly, the Proposed Rule Change would update the Policy to note that procedural aspects and relevant parameters related to the Policy are set out in the corresponding procedures and parameter documents, rather than model documents as the current Policy states, and highlight that procedural aspects related to the Policy are set out in the corresponding procedures. The Proposed Rule Change also would delete as unnecessary and duplicative certain information related to its monitoring of Clearing Members' financial information because that information is addressed in other ICEEU policies.[25]

The Proposed Rule Change will help clarify the Policy and Procedures and ensure that they are accurate and consistent both with each other and with ICEEU's other policies and procedures, which will enhance the ability of ICEEU and its stakeholders to understand the Policy and Procedures and apply them accurately and consistently. Ensuring the Policy and Procedures are easily understood and applied accurately and consistently will, in turn, help ensure that ICEEU effectively manages and mitigates the operational and other risks presented by its relationship with Clearing Members, thereby supporting ICEEU's ability to promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in ICEEU's custody or control or for which it is responsible, and protect investors and the public interest.

For these reasons, the Commission finds that the Proposed Rule Change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.[26]

B. Consistency With Rule 17Ad–22(e)(2)(i) and (v)

Rules 17Ad–22(e)(2)(i) and (v) require ICEEU to ''establish, implement, maintain, and enforce written policies and procedures reasonably designed to . . . provide for governance arrangements that are clear and transparent . . . and specify clear and direct lines of responsibility.'' [27] Based on its review of the record, and for the reasons discussed below, the Commission finds that the Proposed Rule Change is consistent with Rule 17Ad–22(e)(2)(i) and (v).

The Proposed Rule Change clearly defines responsibilities for a number of ICEEU employees. For instance, in both the Policy and Procedures, the Proposed Rule Change identifies the document owner and relevant staff as responsible for conducting document reviews, remediating findings, completing internal governance, and receiving regulatory approvals. The Proposed Rule Change also would add text to the Procedures that makes clear that the Membership team will ensure that all Applicants are added to the schedule of insured entities by the ICE Group insurer, and would remove as unnecessary text requiring notification of the relevant Product Risk Committees of new applications for clearing membership.[28] By defining who has or does not have responsibilities and making this information readily available in the Policy and Procedures the Proposed Rule Change achieves clarity and transparency.

The Commission finds, therefore, that the Proposed Rule Change is consistent

[18] *Id.*

[19] 15 U.S.C. 78s(b)(2)(C).

[20] 15 U.S.C. 78q–1(b)(3)(F).

[21] 17 CFR 240.17Ad–22(e)(2).

[22] 17 CFR 240.17Ad–22(e)(18).

[23] 15 U.S.C. 78q–1(b)(3)(F).

[24] Notice, 88 FR at 59548.

[25] *Id.*

[26] 15 U.S.C. 78q–1(b)(3)(F).

[27] 17 CFR 240.17Ad–22(e)(2).

[28] Notice, 88 FR at 59548.

with the requirements of Rule 17Ad–22(e)(2)(i) and (v).[29]

C. Consistency With Rule 17Ad–22(e)(18)

Rule 17Ad–22(e)(18) requires ICEEU to ''establish, implement, maintain, and enforce written policies and procedures reasonably designed to . . . establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis.'' [30] Based on its review of the record, and for the reasons discussed below, the Commission finds that the Proposed Rule Change is consistent with Rule 17Ad–22(e)(18).[31]

The Proposed Rule Change would update the Policy to specify that ICEEU undertakes ongoing monitoring to monitor Clearing Member's adherence to membership criteria and that ongoing monitoring consists of continuous monitoring and additional trigger-based reviews, including relating to credit and AML/KYC risk and to daily operational matters (such as margin calls). Because these aspects of the Proposed Rule Change are reasonably designed to help ensure that ICEU monitors compliance with its membership criteria on an ongoing basis, the Commission finds that the Proposed Rule Change is consistent with the requirements of Rule 17Ad–22(e)(18).[32]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act, and in particular, Section 17A(b)(3)(F) of the Act [33] and Rules 17Ad–22(e)(2)(i), (e)(2)(v),[34] and (e)(18) thereunder.[35]

It is therefore ordered pursuant to Section 19(b)(2) of the Act that the Proposed Rule Change (SR–ICEEU–2023–022) be, and hereby is, approved.[36]

[29] 17 CFR 240.17Ad–22(e)(2).

[30] 17 CFR 240.17Ad–22(e)(18).

[31] 17 CFR 240.17Ad–22(e)(18).

[32] 17 CFR 240.17Ad–22(e)(18).

[33] 15 U.S.C. 78q–1(b)(3)(F).

[34] 17 CFR 240.17Ad–22(e)(2).

[35] 17 CFR 240.17Ad–22(e)(18).

[36] In approving the Proposed Rule Change, the Commission considered the proposal's impacts on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[37]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–23814 Filed 10–27–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98793; File No. SR–CboeBYX–2023–015]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule Related to Physical Port Fees

October 24, 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 October 13, 2023, Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX Equities'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX Equities'') proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/byx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule relating to physical connectivity fees.[3]

By way of background, a physical port is utilized by a Member or non-Member to connect to the Exchange at the data centers where the Exchange's servers are located. The Exchange currently assesses the following physical connectivity fees for Members and non-Members on a monthly basis: $2,500 per physical port for a 1 gigabit (''Gb'') circuit and $7,500 per physical port for a 10 Gb circuit. The Exchange proposes to increase the monthly fee for 10 Gb physical ports from $7,500 to $8,500 per port. The Exchange notes the proposed fee change better enables it to continue to maintain and improve its market technology and services and also notes that the proposed fee amount, even as amended, continues to be in line with, or even lower than, amounts assessed by other exchanges for similar connections.[4] The physical ports may also be used to access the Systems for the following affiliate exchanges and only one monthly fee currently (and will continue) to apply per port: the Cboe BZX Exchange, Inc. (options and equities), Cboe EDGX Exchange, Inc. (options and equities platforms), Cboe

[37] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed fee changes on July 3, 2023 (SR–CboeBYX–2023–010). On September 1, 2023, the Exchange withdrew that filing and submitted SR-CboeBYX–2023–013. On September 29, 2023, the Securities and Exchange Commission issued a Suspension of and Order Instituting Proceedings to Determine whether to Approve or Disapprove a Proposed Rule Change to Amend its Fees Schedule Related to Physical Port Fees (the ''OIP''). On September 29, 2023, the Exchange filed the proposed fee change (SR–CboeBYX–2023–014). On October 13, 2023, the Exchange withdrew that filing and submitted this filing. No comment letters were received in connection with any of the foregoing rule filings.

[4] *See e.g.,* The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gb physical port. *See also* New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange's 10 Gb physical port) are assessed $22,000 per month, per port.

EDGA Exchange, Inc., and Cboe C2 Exchange, Inc. (''Affiliate Exchanges'').[5]

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.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] 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)[8] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4)[9] of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

The Exchange believes the proposed fee change is reasonable as it reflects a moderate increase in physical connectivity fees for 10 Gb physical ports. Further, the current 10 Gb physical port fee has remained unchanged since June 2018.[10] Since its last increase 5 years ago however, there has been notable inflation. Particularly, the dollar has had an average inflation rate of 3.9% per year between 2018 and today, producing a cumulative price increase of approximately 21.1% inflation since the fee for the 10 Gb physical port was last modified.[11] Moreover, the Exchange historically does not increase fees every year, notwithstanding inflation. Accordingly, the Exchange believes the proposed fee is reasonable as it represents only an approximate 13% increase from the rates adopted five years ago, notwithstanding the cumulative rate of 21.1%.

The Exchange also believes the proposed fee is reasonable as it is still in line with, or even lower than, amounts assessed by other exchanges for similar connections.[12] Indeed, the Exchange believes assessing fees that are a lower rate than fees assessed by other exchanges for analogous connectivity (which were similarly adopted via the rule filing process and filed with the Commission) is reasonable. As noted above, the proposed fee is also the same as is concurrently being proposed for its Affiliate Exchanges. Further, Members are able to utilize a single port to connect to any of the Affiliate Exchanges with no additional fee assessed for that same physical port. Particularly, the Exchange believes the proposed monthly per port fee is reasonable, equitable and not unfairly discriminatory as it is assessed only once, even if it connects with another affiliate exchange since only one port is being used and the Exchange does not wish to charge multiple fees for the same port. Indeed, the Exchange notes that several ports are in fact purchased and utilized across one or more of the Exchange's affiliated Exchanges (and charged only once).

The Exchange also believes that the proposed fee change is not unfairly discriminatory because it would be assessed uniformly across all market participants that purchase the physical ports. The Exchange believes increasing the fee for 10 Gb physical ports and charging a higher fee as compared to the 1 Gb physical port is equitable as the 1 Gb physical port is 1/10th the size of the 10 Gb physical port and therefore does not offer access to many of the products and services offered by the Exchange (*e.g.,* ability to receive certain market data products). Thus, the value of the 1 Gb alternative is lower than the value of the 10 Gb alternative, when measured based on the type of Exchange access it offers. Moreover, market participants that purchase 10 Gb physical ports utilize the most bandwidth and therefore consume the most resources from the network. As such, the Exchange believes the proposed fee change for 10 Gb physical ports is reasonably and appropriately allocated.

The Exchange also notes Members and non-Members will continue to choose the method of connectivity based on their specific needs and no broker-dealer is required to become a Member of, let alone connect directly to, the Exchange. There is also no regulatory requirement that any market participant connect to any one particular exchange. Moreover, direct connectivity is not a requirement to participate on the Exchange. The Exchange also believes substitutable products and services are available to market participants, including, among other things, other equities exchanges that a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of any equities product, such as within the Over-the-Counter (OTC) markets which do not require connectivity to the Exchange. Indeed, there are currently 16 registered equities exchanges that trade equities (12 of which are not affiliated with Cboe), some of which have similar or lower connectivity fees.[13] Based on publicly available information, no single equities exchange has more than approximately 16% of the market share.[14] Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers. For example, in 2020 alone, three new exchanges entered the market: Long Term Stock Exchange (LTSE), Members Exchange (MEMX), and Miami International Holdings (MIAX Pearl).

As noted above, there is no regulatory requirement that any market participant connect to any one equities exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange. Moreover, membership is not a requirement to participate on the Exchange. Indeed, the Exchange is unaware of any one equities exchange whose membership includes every registered broker-dealer. By way of

[5] The Affiliate Exchanges are also submitting contemporaneous identical rule filings.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *Id.*

[9] 15 U.S.C. 78f(b)(4).

[10] *See* Securities and Exchange Release No. 83441 (June 14, 2018), 83 FR 28684 (June 20, 2018) (SR–CboeBYX–2018–006).

[11] *See https://www.officialdata.org/us/inflation/2010?amount=1.*

[12] *See e.g.,* The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10 Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10 Gb physical port. *See also* New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange's 10 Gb physical port) are assessed $22,000 per month, per port.

[13] *Id.*

[14] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (June 29 2023), available at *https://www.cboe.com/us/equities/market_statistics/.*

example, while the Exchange has 110 members that trade equities, Cboe EDGX has 124 members that trade equities, Cboe EDGA has 103 members and Cboe BZX has 132 members. There is also no firm that is a Member of BYX Equities only. Further, based on publicly available information regarding a sample of the Exchange's competitors, NYSE has 143 members,[15] IEX has 129 members,[16] and MIAX Pearl has 51 members.[17]

A market participant may also submit orders to the Exchange via a Member broker or a third-party reseller of connectivity. The Exchange notes that third-party non-Members also resell exchange connectivity. This indirect connectivity is another viable alternative for market participants to trade on the Exchange without connecting directly to the Exchange (and thus not pay the Exchange connectivity fees), which alternative is already being used by non-Members and further constrains the price that the Exchange is able to charge for connectivity to its Exchange.[18] The Exchange notes that it could, but chooses not to, preclude market participants from reselling its connectivity. Unlike other exchanges, the Exchange also chooses not to adopt fees that would be assessed to third-party resellers on a per customer basis (*i.e.,* fee based on number of Members that connect to the Exchange indirectly via the third-party).[19] Particularly, these third-party resellers may purchase the Exchange's physical ports and resell access to such ports either alone or as part of a package of services. The Exchange notes that multiple Members are able to share a single physical port (and corresponding bandwidth) with other non-affiliated Members if purchased through a third-party re-seller.[20] This allows resellers to mutualize the costs of the ports for market participants and provide such ports at a price that may be lower than the Exchange charges due to this mutualized connectivity. These third-party sellers may also provide an additional value to market participants as they may also manage and monitor these connections, and clients of these third-parties may also be able to connect from the same colocation facility either from their own racks or using the third-party's managed racks and infrastructure which may provide further cost-savings. As such, even firms that wish to utilize a single, dedicated 10 Gb port (*i.e.,* use one single 10 Gb port themselves instead of sharing a port with other firms), may still realize cost savings via a third-party reseller because such reseller may be providing additional services and infrastructure support alongside the physical port offering (*e.g.,* providing space, hosting, power, and other long-haul connectivity options). Further, as noted above, the Exchange does not receive any connectivity revenue when connectivity is resold by a third-party, which often is resold to multiple customers, some of whom are agency broker-dealers that have numerous customers of their own. Therefore, given the availability of third-party providers that also offer connectivity solutions, the Exchange believes participation on the Exchange remains affordable (notwithstanding the proposed fee change) for all market participants, including trading firms that may be able to take advantage of lower costs that result from mutualized connectivity and/or from other services provided alongside the physical port offerings. Because third-party resellers also act as a viable alternative to direct connectivity to the Exchange, the price that the Exchange is able to charge for direct connectivity to its Exchange is constrained. Further, the Exchange believes its offerings are more affordable as compared to similar offerings at competitor exchanges.[21]

Accordingly, the vigorous competition among national securities exchanges provides many alternatives for firms to voluntarily decide whether direct connectivity to the Exchange is appropriate and worthwhile, and as noted above, no broker-dealer is required to become a Member of the Exchange, let alone connect directly to it. In the event that a market participant views the Exchange's proposed fee change as more or less attractive than the competition, that market participant can choose to connect to the Exchange indirectly or may choose not to connect to that exchange and connect instead to one or more of the other 12 non-Cboe affiliated equities markets. Indeed, market participants are free to choose which exchange or reseller to use to satisfy their business needs. Moreover, if the Exchange charges excessive fees, it may stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity. Notwithstanding the foregoing, the Exchange still believes that the proposed fee increase is reasonable, equitably allocated and not unfairly discriminatory, even for market participants that determine to connect directly to the Exchange for business purposes, as those business reasons should presumably result in revenue capable of covering the proposed fee.

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 fee change will not impact intramarket competition because it will apply to all similarly situated Members equally (i.e., all market participants that choose to purchase the 10 Gb physical port). Additionally, the Exchange does not believe its proposed pricing will impose a barrier to entry to smaller participants and notes that its proposed connectivity pricing is associated with relative usage of the various market

[15] *See https://www.nyse.com/markets/nyse/membership.*

[16] *See https://www.iexexchange.io/membership.*

[17] *See https://www.miaxglobal.com/sites/default/files/page-files/20230630_MIAX_Pearl_Equities_Exchange_Members_June_2023.pdf.*

[18] Third-party resellers of connectivity play an important role in the capital markets infrastructure ecosystem. For example, third-party resellers can help unify access for customers who want exposure to multiple financial markets that are geographically dispersed by establishing connectivity to all of the different exchanges, so the customers themselves do not have to. Many of the third-party connectivity resellers also act as distribution agents for all of the market data generated by the exchanges as they can use their established connectivity to subscribe to, and redistribute, data over their networks. This may remove barriers that infrastructure requirements may otherwise pose for customers looking to access multiple markets and real-time data feeds. This facilitation of overall access to the marketplace is ultimately beneficial for the entire capital markets ecosystem, including the Exchange, on which such firms transact business.

[19] *See, e.g.,* Nasdaq Price List—U.S. Direct Connection and Extranet Fees, available at, U.S. Direct-Extranet Connection (*nasdaqtrader.com*); and Securities Exchange Act Release Nos. 74077 (January 16, 2022), 80 FR 3683 (January 23, 2022) (SR–NASDAQ–2015–002); and 82037 (November 8, 2022), 82 FR 52953 (November 15, 2022) (SR–NASDAQ–2017–114).

[20] For example, a third-party reseller may purchase one 10 Gb physical port from the Exchange and resell that connectivity to three different market participants who may only need 3 Gb each and leverage the same single port.

[21] *See e.g.,* The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10 Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10 Gbps physical port. *See also* New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange's 10 Gbps physical port) are assessed $22,000 per month, per port.

participants. For example, market participants with modest capacity needs can continue to buy the less expensive 1 Gb physical port (which cost is not changing) or may choose to obtain access via a third-party re-seller. While pricing may be increased for the larger capacity physical ports, such options provide far more capacity and are purchased by those that consume more resources from the network. Accordingly, the proposed connectivity fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most.

The Exchange's proposed fee is also still lower than some fees for similar connectivity on other exchanges and therefore may stimulate intermarket competition by attracting additional firms to connect to the Exchange or at least should not deter interested participants from connecting directly to the Exchange. Further, if the changes proposed herein are unattractive to market participants, the Exchange can, and likely will, see a decline in connectivity via 10 Gb physical ports as a result. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect directly to the Exchange based on the value received compared to the cost of doing so.

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 [22] and paragraph (f) of Rule 19b–4 [23] 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–CboeBYX–2023–015 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–CboeBYX–2023–015. 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–CboeBYX–2023–015 and should be submitted on or before November 20, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–23813 Filed 10–27–23; 8:45 am]

BILLING CODE 8011–01–P

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98794; File No. SR–CboeBZX–2023–084]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend its Fees Schedule Related to Physical Port Fees

October 24, 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 October 16, 2023, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX Equities'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX Equities'') proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 its fee schedule relating to physical connectivity fees.[3]

By way of background, a physical port is utilized by a Member or non-Member to connect to the Exchange at the data centers where the Exchange's servers are located. The Exchange currently assesses the following physical connectivity fees for Members and non-Members on a monthly basis: $2,500 per physical port for a 1 gigabit (''Gb'') circuit and $7,500 per physical port for a 10 Gb circuit. The Exchange proposes to increase the monthly fee for 10 Gb physical ports from $7,500 to $8,500 per port. The Exchange notes the proposed fee change better enables it to continue to maintain and improve its market technology and services and also notes that the proposed fee amount, even as amended, continues to be in line with, or even lower than, amounts assessed by other exchanges for similar connections.[4] The physical ports may also be used to access the Systems for the following affiliate exchanges and only one monthly fee currently (and will continue) to apply per port: the Exchange's options platform (BZX Options), Cboe EDGX Exchange, Inc. (options and equities platforms), Cboe BYX Exchange, Inc., Cboe EDGA Exchange, Inc., and Cboe C2 Exchange, Inc. (''Affiliate Exchanges'').[5]

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.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] 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)[8] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4)[9] of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

The Exchange believes the proposed fee change is reasonable as it reflects a moderate increase in physical connectivity fees for 10 Gb physical ports. Further, the current 10 Gb physical port fee has remained unchanged since June 2018.[10] Since its last increase 5 years ago however, there has been notable inflation. Particularly, the dollar has had an average inflation rate of 3.9% per year between 2018 and today, producing a cumulative price increase of approximately 21.1% inflation since the fee for the 10 Gb physical port was last modified.[11] Moreover, the Exchange historically does not increase fees every year, notwithstanding inflation. Accordingly, the Exchange believes the proposed fee is reasonable as it represents only an approximate 13% increase from the rates adopted five years ago, notwithstanding the cumulative rate of 21.1%.

The Exchange also believes the proposed fee is reasonable as it is still in line with, or even lower than, amounts assessed by other exchanges for similar connections.[12] Indeed, the Exchange believes assessing fees that are a lower rate than fees assessed by other exchanges for analogous connectivity (which were similarly adopted via the rule filing process and filed with the Commission) is reasonable. As noted above, the proposed fee is also the same as is concurrently being proposed for its Affiliate Exchanges. Further, Members are able to utilize a single port to connect to any of the Affiliate Exchanges with no additional fee assessed for that same physical port. Particularly, the Exchange believes the proposed monthly per port fee is reasonable, equitable and not unfairly discriminatory as it is assessed only once, even if it connects with another affiliate exchange since only one port is being used and the Exchange does not wish to charge multiple fees for the same port. Indeed, the Exchange notes that several ports are in fact purchased and utilized across one or more of the Exchange's affiliated Exchanges (and charged only once).

The Exchange also believes that the proposed fee change is not unfairly discriminatory because it would be assessed uniformly across all market participants that purchase the physical ports. The Exchange believes increasing the fee for 10 Gb physical ports and charging a higher fee as compared to the 1 Gb physical port is equitable as the 1 Gb physical port is 1/10th the size of the 10 Gb physical port and therefore does not offer access to many of the products and services offered by the Exchange (*e.g.,* ability to receive certain market data products). Thus, the value of the 1 Gb alternative is lower than the value of the 10 Gb alternative, when measured based on the type of Exchange access it offers. Moreover, market participants

[3] The Exchange initially filed the proposed fee changes on July 3, 2023 (SR–CboeBZX–2023–046). On September 1, 2023, the Exchange withdrew that filing and submitted SR–CboeBZX–2023–067. On September 29, 2023, the Securities and Exchange Commission issued a Suspension of and Order Instituting Proceedings to Determine whether to Approve or Disapprove a Proposed Rule Change to Amend its Fees Schedule Related to Physical Port Fees (the ''OIP''). On October 2, 2023, the Exchange filed the proposed fee change (SR–CboeBZX–2023–080). On October 13, 2023, the Exchange withdrew that filing and on business date October 16, 2023 submitted this filing. No comment letters were received in connection with any of the foregoing rule filings.

[4] *See e.g.,* The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10 Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10 Gb physical port. *See also* New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange's 10 Gb physical port) are assessed $22,000 per month, per port.

[5] The Affiliate Exchanges are also submitting contemporaneous identical rule filings.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *Id.*

[9] 15 U.S.C. 78f(b)(4).

[10] *See* Securities and Exchange Release No. 83442 (June 14, 2018), 83 FR 28675 (June 20, 2018) (SR–CboeBZX–2018–037).

[11] *See https://www.officialdata.org/us/inflation/2010?amount=1.*

[12] *See e.g.,* The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10 Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10 Gb physical port. *See also* New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange's 10 Gb physical port) are assessed $22,000 per month, per port.

that purchase 10 Gb physical ports utilize the most bandwidth and therefore consume the most resources from the network. As such, the Exchange believes the proposed fee change for 10 Gb physical ports is reasonably and appropriately allocated.

The Exchange also notes Members and non-Members will continue to choose the method of connectivity based on their specific needs and no broker-dealer is required to become a Member of, let alone connect directly to, the Exchange. There is also no regulatory requirement that any market participant connect to any one particular exchange. Moreover, direct connectivity is not a requirement to participate on the Exchange. The Exchange also believes substitutable products and services are available to market participants, including, among other things, other equities exchanges that a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of any equities product, such as within the Over-the-Counter (OTC) markets which do not require connectivity to the Exchange. Indeed, there are currently 16 registered equities exchanges that trade equities (12 of which are not affiliated with Cboe), some of which have similar or lower connectivity fees.[13] Based on publicly available information, no single equities exchange has more than approximately 16% of the market share.[14] Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers. For example, in 2020 alone, three new exchanges entered the market: Long Term Stock Exchange (LTSE), Members Exchange (MEMX), and Miami International Holdings (MIAX Pearl).

As noted above, there is no regulatory requirement that any market participant connect to any one equities exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange. Moreover, membership is not a requirement to participate on the Exchange. Indeed, the Exchange is unaware of any one equities exchange whose membership includes every registered broker-dealer. By way of example, while the Exchange has 132 members that trade equities, Cboe EDGX has 124 members that trade equities, Cboe EDGA has 103 members and Cboe BYX has 110 members. There is also no firm that is a Member of BZX Equities only. Further, based on publicly available information regarding a sample of the Exchange's competitors, NYSE has 143 members,[15] IEX has 129 members,[16] and MIAX Pearl has 51 members.[17]

A market participant may also submit orders to the Exchange via a Member broker or a third-party reseller of connectivity. The Exchange notes that third-party non-Members also resell exchange connectivity. This indirect connectivity is another viable alternative for market participants to trade on the Exchange without connecting directly to the Exchange (and thus not pay the Exchange connectivity fees), which alternative is already being used by non-Members and further constrains the price that the Exchange is able to charge for connectivity to its Exchange.[18] The Exchange notes that it could, but chooses not to, preclude market participants from reselling its connectivity. Unlike other exchanges, the Exchange also chooses not to adopt fees that would be assessed to third-party resellers on a per customer basis (*i.e.,* fee based on number of Members that connect to the Exchange indirectly via the third-party).[19] Particularly, these third-party resellers may purchase the Exchange's physical ports and resell access to such ports either alone or as part of a package of services. The Exchange notes that multiple Members are able to share a single physical port (and corresponding bandwidth) with other non-affiliated Members if purchased through a third-party re-seller.[20] This allows resellers to mutualize the costs of the ports for market participants and provide such ports at a price that may be lower than the Exchange charges due to this mutualized connectivity. These third-party sellers may also provide an additional value to market participants as they may also manage and monitor these connections, and clients of these third-parties may also be able to connect from the same colocation facility either from their own racks or using the third-party's managed racks and infrastructure which may provide further cost-savings. As such, even firms that wish to utilize a single, dedicated 10 Gb port (*i.e.,* use one single 10 Gb port themselves instead of sharing a port with ther firms), may still realize cost savings via a third-party reseller because such reseller may be providing additional services and infrastructure support alongside the physical port offering (*e.g.,* providing space, hosting, power, and other long-haul connectivity options). Further, as noted above, the Exchange does not receive any connectivity revenue when connectivity is resold by a third-party, which often is resold to multiple customers, some of whom are agency broker-dealers that have numerous customers of their own. Therefore, given the availability of third-party providers that also offer connectivity solutions, the Exchange believes participation on the Exchange remains affordable (notwithstanding the proposed fee change) for all market participants, including trading firms that may be able to take advantage of lower costs that result from mutualized connectivity and/or from other services provided alongside the physical port offerings. Because third-party resellers also act as a viable alternative to direct connectivity to the Exchange, the price that the Exchange is able to charge for direct connectivity to its Exchange is constrained. Further, the Exchange believes its offerings are more affordable as compared to similar offerings at competitor exchanges.[21]

[13] *Id.*

[14] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (June 29 2023), available at *https://www.cboe.com/us/equities/market_statistics/.*

[15] *See https://www.nyse.com/markets/nyse/membership.*

[16] *See https://www.iexexchange.io/membership.*

[17] *See https://www.miaxglobal.com/sites/default/files/page-files/20230630_MIAX_Pearl_Equities_Exchange_Members_June_2023.pdf.*

[18] Third-party resellers of connectivity play an important role in the capital markets infrastructure ecosystem. For example, third-party resellers can help unify access for customers who want exposure to multiple financial markets that are geographically dispersed by establishing connectivity to all of the different exchanges, so the customers themselves do not have to. Many of the third-party connectivity resellers also act as distribution agents for all of the market data generated by the exchanges as they can use their established connectivity to subscribe to, and redistribute, data over their networks. This may remove barriers that infrastructure requirements may otherwise pose for customers looking to access multiple markets and real-time data feeds. This facilitation of overall access to the marketplace is ultimately beneficial for the entire capital markets ecosystem, including the Exchange, on which such firms transact business.

[19] *See, e.g.,* Nasdaq Price List—U.S. Direct Connection and Extranet Fees, available at, US Direct-Extranet Connection (*nasdaqtrader.com*); and Securities Exchange Act Release Nos. 74077 (January 16, 2022), 80 FR 3683 (January 23, 2022) (SR–NASDAQ–2015–002); and 82037 (November 8, 2022), 82 FR 52953 (November 15, 2022) (SR–NASDAQ–2017–114).

[20] For example, a third-party reseller may purchase one 10 Gb physical port from the Exchange and resell that connectivity to three different market participants who may only need 3 Gb each and leverage the same single port.

[21] *See e.g.,* The Nasdaq Stock Market LLC (''Nasdaq''), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of $15,000 for each 10 Gbps

Accordingly, the vigorous competition among national securities exchanges provides many alternatives for firms to voluntarily decide whether direct connectivity to the Exchange is appropriate and worthwhile, and as noted above, no broker-dealer is required to become a Member of the Exchange, let alone connect directly to it. In the event that a market participant views the Exchange's proposed fee change as more or less attractive than the competition, that market participant can choose to connect to the Exchange indirectly or may choose not to connect to that exchange and connect instead to one or more of the other 12 non-Cboe affiliated equities markets. Indeed, market participants are free to choose which exchange or reseller to use to satisfy their business needs. Moreover, if the Exchange charges excessive fees, it may stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity. Notwithstanding the foregoing, the Exchange still believes that the proposed fee increase is reasonable, equitably allocated and not unfairly discriminatory, even for market participants that determine to connect directly to the Exchange for business purposes, as those business reasons should presumably result in revenue capable of covering the proposed fee.

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 fee change will not impact intramarket competition because it will apply to all similarly situated Members equally (*i.e.*, all market participants that choose to purchase the 10 Gb physical port). Additionally, the Exchange does not believe its proposed pricing will impose a barrier to entry to smaller participants and notes that its proposed connectivity pricing is associated with relative usage of the various market participants. For example, market participants with modest capacity needs can continue to buy the less expensive 1 Gb physical port (which cost is not changing) or may choose to obtain access via a third-party re-seller. While pricing may be increased for the larger capacity physical ports, such options provide far more capacity and are purchased by those that consume more resources from the network. Accordingly, the proposed connectivity fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most.

The Exchange's proposed fee is also still lower than some fees for similar connectivity on other exchanges and therefore may stimulate intermarket competition by attracting additional firms to connect to the Exchange or at least should not deter interested participants from connecting directly to the Exchange. Further, if the changes proposed herein are unattractive to market participants, the Exchange can, and likely will, see a decline in connectivity via 10 Gb physical ports as a result. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect directly to the Exchange based on the value received compared to the cost of doing so.

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 [22] and paragraph (f) of Rule 19b–4 [23] 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–CboeBZX–2023–084 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR-CboeBZX–2023–084. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBZX–2023–084 and should be submitted on or before November 20, 2023.

Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10 Gbps physical port. *See also* New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange's 10 Gbps physical port) are assessed $22,000 per month, per port.

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–23817 Filed 10–27–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98792; File No. SR–MIAX–2023–42]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delay Implementation of an Amendment to Rule 518, Complex Orders, To Permit Legging Through the Simple Market

October 24, 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 October 12, 2023, Miami International Securities Exchange LLC (''MIAX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to delay implementation of the change to allow a component of a complex order[3] that legs into the Simple Order Book[4] to execute at a price that is outside the NBBO.[5]

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/miax-options/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 22, 2019, the Exchange filed a proposed rule change to amend subsection (c)(2)(iii) of Exchange Rule 518, Complex Orders, to remove the provision which provides that a component of a complex order that legs into the Simple Order Book may not execute at a price that is outside the NBBO.[6] The proposed rule change indicated that the Exchange would announce the implementation date of the proposed rule change by Regulatory Circular to be published no later than 90 days following the operative date of the proposed rule. The implementation date will be no later than 90 days following the issuance of the Regulatory Circular. The Exchange filed to delay the implementation of this functionality and the latest proposal delayed implementation until the third quarter of 2023.[7] The Exchange now proposes to again delay the implementation of this functionality until the fourth quarter of 2024, at the latest.

The Exchange proposes this delay in order to allow the Exchange to reprioritize its software delivery and release schedule as a result of a shift in priorities at the Exchange. The Exchange will issue a Regulatory Circular notifying market participants at least 45 days prior to implementing this functionality.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest by allowing the Exchange additional time to plan and implement the proposed functionality.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal to delay the implementation of the proposed functionality does not impose an undue burden on competition. Delaying the implementation will simply allow the Exchange additional time to properly plan and implement the proposed functionality.

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition as the delay will apply equally to all Members of the Exchange.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition as the proposal is to delay the implementation of approved functionality which affects MIAX Members only and does not impact intermarket competition.

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[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A ''complex order'' is any order involving the concurrent purchase and/or sale of two or more different options in the same underlying security (the ''legs'' or ''components'' of the complex order), for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purposes of executing a particular investment strategy. Mini-options may only be part of a complex order that includes other mini-options. Only those complex orders in the classes designated by the Exchange and communicated to Members via Regulatory Circular with no more than the applicable number of legs, as determined by the Exchange on a class-by-class basis and communicated to Members via Regulatory Circular, are eligible for processing. *See* Exchange Rule 518(a)(5).

[4] The ''Simple Order Book'' is the Exchange's regular electronic book of orders and quotes. *See* Exchange Rule 518(a)(15).

[5] The term ''NBBO'' means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from the appropriate Securities Information Processor (''SIP''). *See* Exchange Rule 518(a)(14).

[6] *See* Securities Exchange Release No. 87440 (November 1, 2019), 84 FR 60117 (November 7, 2019) (SR–MIAX–2019–45).

[7] *See* Securities Exchange Release Nos. 94939 (May 18, 2022), 87 FR 31590 (May 24, 2022) (SR–MIAX–2022–21); No. 96490 (December 13, 2022), 87 FR 77648 (December 19, 2022) (SR–MIAX–2022–46).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) [12] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. Rule 19b–4(f)(6)(iii) also requires a self-regulatory organization to provide the Commission with written notice of its intent to file a proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The Exchange has asked the Commission to waive both the five-business day pre-filing requirement and the 30-day operative delay to allow the Exchange to provide an immediate update regarding the implementation of the functionality, which would eliminate potential confusion regarding the implementation of the proposal. The Exchange states that delaying the implementation of the functionality will allow the Exchange to reprioritize its software delivery and release schedule and provide the Exchange additional time to plan and implement the functionality.

The Commission waives the five-business day pre-filing requirement. In addition, the Commission finds that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay. As discussed above, the Exchange amended its rules in 2019 to allow the component legs of a complex order to execute at a price that is outside the NBBO when they execute against interest on the Exchange's Simple Order Book.[14] The Exchange has delayed the implementation of this functionality several times, most recently until the third quarter of 2023.[15] Waiver of the operative delay will allow the Exchange to immediately notify its members of the delay in implementing the functionality, which could help to avoid confusion regarding its implementation. Therefore, the Commission waives the 30-day operative delay and designates the proposal operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MIAX–2023–42 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–MIAX–2023–42. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MIAX–2023–42 and should be submitted on or before November 20, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–23816 Filed 10–27–23; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *See supra* note 6.

[15] *See supra* note 7.

[16] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, November 2, 2023.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: October 26, 2023.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–24019 Filed 10–26–23; 4:15 pm]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18183 and #18184; Illinois Disaster Number IL–00093]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Illinois

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Illinois (FEMA–4728–DR), dated 09/15/2023.

Incident: Severe Storms and Flooding.

Incident Period: 06/29/2023 through 07/02/2023.

DATES: Issued on 10/23/2023.

Physical Loan Application Deadline Date: 11/14/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 06/17/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Illinois, dated 09/15/2023, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Calhoun, Logan.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–23869 Filed 10–27–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18100 and #18101; ALASKA Disaster Number AK–00059]

Presidential Declaration Amendment of a Major Disaster for the State of Alaska

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Alaska (FEMA–4730–DR), dated 08/23/2023.

Incident: Flooding.

Incident Period: 05/12/2023 through 06/03/2023.

DATES: Issued on 10/23/2023.

Physical Loan Application Deadline Date: 12/22/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 05/23/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Alaska, dated 08/23/2023, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 12/22/2023.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–23870 Filed 10–27–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18094 and #18095; HAWAII Disaster Number HI–00074]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Hawaii

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of HAWAII (FEMA–4724–DR), dated 08/21/2023.

Incident: Wildfires, including High Winds.

Incident Period: 08/08/2023 through 09/30/2023.

DATES: Issued on 10/23/2023.

Physical Loan Application Deadline Date: 10/25/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 05/21/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Hawaii, dated 08/21/2023, is hereby amended to extend the deadline for filing applications for physical damage as a result of this disaster to 10/25/2023.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–23824 Filed 10–27–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18075 and #18076; Illinois Disaster Number IL–00086]

Presidential Declaration Amendment of a Major Disaster for the State of Illinois

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of ILLINOIS (FEMA–4728–DR), dated 08/15/2023.

Incident: Severe Storms and Flooding.

Incident Period: 06/29/2023 through 07/02/2023.

DATES: Issued on 10/13/2023.

Physical Loan Application Deadline Date: 10/30/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 05/15/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Illinois, dated 08/15/2023, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 10/30/2023.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–23822 Filed 10–27–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12248]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Art of Enterprise: Israhel van Meckenem's 15th-Century Print Workshop'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary display in the exhibition ''Art of Enterprise: Israhel van Meckenem's 15th-Century Print Workshop'' at the Chazen Museum of Art, University of Wisconsin-Madison, in Madison, Wisconsin, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–23836 Filed 10–27–23; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

Release of Waybill Data

The Surface Transportation Board has received a request from Monroe County Planning and Development (WB23–55—10/11/23) for permission to use data from the Board's annual 2021 masked Carload Waybill Sample. A copy of this request may be obtained from the Board's website under docket no. WB23–55.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Alexander Dusenberry, (202) 245–0319.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2023–23900 Filed 10–27–23; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2023–0043]

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 a new 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 29, 2023.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 0043 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: Kenneth Petty, Office of Planning (HEPP–1), 202–366–6654, and Brian Gardner, Office of Planning (HEPP–30), 202–366–4061, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Application to Participate in the Transportation Access Pilot Program.

Background: The Infrastructure Investment and Jobs Act of 2021 requires FHWA to establish the Transportation Access Pilot Program (Pub. L. 117–58 § 13010). The program's intent is to improve transportation planning by measuring the level of access by surface transportation modes to important destinations, disaggregating the level of access by surface transportation mode by a variety of categories (*e.g.,* population or freight commodities), and assessing the change in accessibility that would result from transportation investments.

Beginning in 2024, FHWA plans to use an application form and follow-up phone conversations to gather information from interested participants. Information collected in the application form will be used to evaluate applications to participate in the Transportation Access Pilot Program. The application will request information necessary to evaluate applications and select pilot program participants. The application will request that applicants provide information about: (1) previous experience of the eligible entity measuring transportation access or other performance management experience, if applicable; (2) the types of important destinations to which the eligible entity intends to measure access; (3) the types of data disaggregation the eligible entity intends to pursue; (4) a general description of the methodology the eligible entity intends to apply; (5) if the applicant does not intend the pilot program to apply to the full area under the jurisdiction of the applicant, a description of the geographic area in which the applicant intends the pilot program to apply; and (6) additional information required to evaluate and make selections for participation in the Transportation Access Pilot Program.

FHWA plans to require applications be submitted in electronic format (Adobe PDF or similar format). FHWA estimates that the application will take approximately one hour to complete. The application will consist of both multiple-choice and short-answer question formats. FHWA may request a follow-up phone conversation to address questions in an agency's submitted application form. These phone conversations will be approximately 30 minutes in length. This is planned as an annual information collection, until such time as the program is no longer accepting applications.

Respondents: Approximately 50 percent of the universe of potential pilot program participants, which includes 52 State DOTs equivalents, and approximately 420 MPOs and 10 RTPOs.

Frequency: Annually.

Estimated Average Burden per Response: Approximately 90 minutes per respondent.

Estimated Total Annual Burden Hours: Approximately 362 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA 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, 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; Public Law 117–58 section 13010.

Issued on: October 25, 2023.

Jazmyne Lewis,

Information Collection Officer.

[FR Doc. 2023–23867 Filed 10–27–23; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2020–0133]

National Historic Landmark Nuclear Ship Savannah Available; Request for Information

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of vessel availability and request for information.

SUMMARY: The Maritime Administration (MARAD) is decommissioning the nuclear power plant of the National Historic Landmark (NHL) vessel Nuclear Ship Savannah (NSS), which will result in the termination of the ship's Nuclear Regulatory Commission (NRC) license, making the ship available for disposition, including potential conveyance or preservation. The purpose of the Notice of Availability and Request for Information (NOA and RFI) is to determine preservation interest from entities that may wish to acquire the NSS. Information received in response to this RFI will help to inform the development of viable preservation alternatives for the NSS. MARAD requests information from entities that may be interested in acquiring the ship for conveyance and preservation purposes as prescribed in the recently executed Programmatic Agreement (PA) which is available for review on the MARAD docket at *www.regulations.gov.* In responding to the RFI, please review the below **SUPPLEMENTARY INFORMATION**/ Information Requested section to inform your submission.

DATES: All responses to this RFI are due on or before February 16, 2024, following the information provided in the **ADDRESSES** section below.

An information session for interested parties will be held on November 18, 2023, to allow potential responders the opportunity to ask MARAD questions regarding the NSS. The meeting will be held onboard the NSS, online, or by phone. You must RSVP for the site visit to the email or phone number listed in the section below no later than November 11, 2023.

Site visits for interested parties will be held on December 16 and 17, 2023. You must RSVP for the site visit to the email or phone number listed in the section below no later than December 9, 2023. Parties who are unable to make this date may request alternate arrangements by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

The NSS is not compliant with the Americans with Disabilities Act. The ship has some capability to accommodate persons with impaired mobility, for which advance notice is required. If you require accommodations to attend the site visit, please include this information in your RSVP. The U.S. Department of Transportation is committed to providing all participants equal access to this meeting. If you need alternative formats or services such as sign language, interpretation, or other ancillary aids, please also include that in your RSVP. Additional dates may be provided, or parties may request alternate dates subject to the same conditions as above.

ADDRESSES: You may submit your responses to this RFI and any supplemental information by any of the following methods:

- *Email: marad.history@dot.gov.* Please include NS Savannah RFI in the subject line of the email.
- *Overnight Mail:* N.S. Savannah/ Savannah Technical Staff, Pier 13

Canton Marine Terminal, 4601 Newgate Avenue, Baltimore, MD 21224, ATTN: Erhard Koehler.

FOR FURTHER INFORMATION CONTACT: Erhard W. Koehler, Senior Technical Advisor, N.S. Savannah, Maritime Administration, at (202) 680–2066 or via email at *marad.history@dot.gov.* Additional information regarding the vessel is available at *https://www.maritime.dot.gov/nssavannah.*

SUPPLEMENTARY INFORMATION: Built in 1959, the NSS is the world's first nuclear-powered merchant ship and served as a signature element of President Eisenhower's Atoms for Peace program. While in service, NSS demonstrated the peaceful use of atomic power and explored the feasibility of nuclear-powered merchant vessels. NSS was retired from active service in 1970. The ship was listed in the National Register of Historic Places in 1983 and designated as an NHL in 1991 for exhibiting exceptional value in illustrating the nuclear, maritime, transportation, and political heritages of the United States.

Disposition

The NRC license termination will lead to MARAD's disposition of the NSS. Because the decommissioning and disposition of the NHL ship is an Undertaking under Section 106 of the NHPA, with an unknown end-state, MARAD developed and executed a PA covering the decommissioning and disposition of the ship. The PA outlines the process by which the disposition of NSS will be considered among the NRC, the Advisory Council on Historic Preservation (ACHP), and the Maryland State Historic Preservation Officer (SHPO). Concurrent with the decommissioning project, MARAD requests information from entities that may be interested in acquiring the ship for conveyance and preservation purposes as prescribed in the PA. The approximate date on which the vessel will be available for transfer is three (3) to six (6) months after NRC license termination.

Stipulation IV of the PA outlines a disposition alternatives development process wherein MARAD will study and evaluate alternatives that would result in the preservation of the NSS. This process will include the development of a Disposition Alternatives Study and the publication of a NOA and RFI. Although the PA lists these activities sequentially, with the Disposition Alternatives Study preceding the publication of the NOA and RFI, the signatories of the PA recently concurred that the NOA and RFI will instead precede the Disposition Alternatives Study. Therefore, MARAD is publishing this NOA and RFI in accordance with Stipulation IV of the PA, in advance of the Disposition Alternatives Study.

Conveyance Methods

MARAD is investigating several different methods of conveyance of the NSS, and these will be presented in the Disposition Alternatives Study. These conveyance methods may or may not involve MARAD's continued involvement with the ship. However, in order to foster preservation by removing a future encumbrance, MARAD will either retain the title or will retain a reversionary interest in the title. By this act MARAD is choosing to defer its obligation to scrap Savannah to some future date. MARAD's existing ship donation authority is one of the methods of conveyance that will be used. Parties interested in obtaining the vessel through this method may apply at any time. Further information on MARAD's ship donation program may be found at the following link: *https://www.maritime.dot.gov/national-defense-reserve-fleet/ship-disposal-program/ship-donation.*

Other conveyance methods may include, but are not limited to, a modified donation process, chartering or leasing the ship, cooperative agreements, or potentially partnering with another entity to maintain and operate the ship. MARAD expects to convey the ship in as-is condition at the time of conveyance, to include all mooring lines, fenders, and related equipment, all safety equipment, including spare parts for active safety systems, and tools and stock. The ship will contain a full complement of drawings, and technical and operating manuals. The ship's historic fabric will not be disturbed; however, if title is transferred from the federal government some material may be removed as mitigation. All mitigation efforts will be subject to consultation in accordance with the stipulations in the PA.

Technical Information

Technical information about the NSS in its present configuration will be posted to the MARAD docket and website concurrent with the publication of this notice. The information will include at least the following:

- Ship's drawings and photographs;
- Reports documenting the ship's existing material condition and expected condition at the time of license termination;
- Utility consumption data; and,
- Last material inventory completed.

Information Requested

RFI respondents should provide MARAD with a capability statement that includes at least the following information:

- Proposed use(s) for the ship;
- Mission statement for your organization;
- Proposed or potential locations for ship;
- Staffing resources for maintaining and operating the ship;
- Experience with ship maintenance and operations;
- Experience with historic property or structures;
- Funding sources; and,
- Preferred conveyance mechanism for acquisition of the ship.

Responses, including personal identifiable information will be made public, so please provide any sensitive information in a separate attachment clearly labeled, so that it may be withheld from disclosure as provided by law. Respondents should consider and discuss in their capability statement factors such as the density of museum ships in the location proposed, the nexus between the proposed location and NSS operating history, and any other relevant special criteria favoring the response.

Background

Built in 1959, the NSS is the world's first nuclear-powered merchant ship and served as a signature element of President Eisenhower's Atoms for Peace program. While in service, the NSS demonstrated the peaceful use of atomic power as well as the feasibility of nuclear-powered merchant vessels. NSS operated in experimental service as a passenger/cargo ship from 1962 to 1965, during which time it travelled 90,000 miles, visited 13 countries, and hosted 1.4 million visitors. Following the successful conclusion of the experimental phase, the ship entered its commercial phase in 1965. The ship was operated as a cargo ship generating nearly $12,000,000 in revenue between 1965 and 1970, as well as continuing to serve as a goodwill ambassador for the peaceful use of nuclear power. After successfully fulfilling its objectives, NSS operations were ceased in 1970 and the ship was deactivated and defueled in 1971.

Following deactivation, the NSS was moved to the city of Savannah, GA, where it was to be part of a proposed Eisenhower Peace Memorial; however, the memorial was never established. In 1980, Congress passed Public Law 96–331, which authorized the Secretary of Commerce to bareboat charter the ship

to the Patriots Point Development Authority of South Carolina. The NSS operated as a museum ship at the Patriots Point Naval and Maritime Museum from 1981 through 1994. During this time, the NSS was listed in the National Register of Historic Places (1983) and designated as an NHL (1991) for exhibiting exceptional value in illustrating the nuclear, maritime, transportation, and political heritages of the United States. Additionally, during this time the ship was designated an International Historic Mechanical Engineering Landmark by the American Society of Mechanical Engineers (1983) and a Nuclear Engineering Landmark by the American Nuclear Society (1991).

Following termination of the charter in 1994, the NSS returned to MARAD and was entered into the James River Reserve Fleet in Virginia. The ship was removed from the reserve fleet in 2006 and underwent repairs prior to being relocated in 2008 to Baltimore, Maryland, where it is currently berthed. In 2017, funds for decommissioning of the ship were appropriated. Because the decommissioning and disposition of the NSS is an Undertaking under Section 106 of the NHPA, MARAD initiated consultation in 2018 with the Maryland SHPO, the ACHP, the NRC, the NPS, and other consulting parties. Given the complexities of the Undertaking, including the yet undetermined disposition of the NSS, the parties agreed to develop a PA to guide the execution of the Undertaking.

The PA for the Decommissioning and Disposition of the NSS was executed in March 2023, and it outlines the process by which the disposition of NSS will be considered and executed, concurrent with the decommissioning project. The decommissioning process is well underway, and dismantlement and removal of the major systems, structures, and components that were part of the ship's nuclear power plant is complete. As part of the decommissioning process, MARAD has made numerous modifications and improvements to the NSS from 2015 through the present. These improvements include climate controls, sanitary spaces, shore power, mechanical systems, mooring and access/egress equipment, alarm, and monitoring systems (fire/smoke, intrusion, flooding, security cameras), restored public spaces, office spaces, and administrative infrastructure. Typically, the greatest challenge to any static museum ship effort is the cost associated with converting or transforming the ship into a site suitable and safe for visitors. MARAD has already made improvements, as listed above, which may help to defray some of the initial starting costs for potential recipients who may be interested in receiving the ship. Additional details about the ship's condition are included in the attachments posted to the MARAD docket and website.

The disposition process is sequenced to reach a conclusion at the same time that decommissioning ends—effective with the license termination to allow a seamless transition to whichever end-state condition is approved. MARAD anticipates making its disposition decision no later than the license termination date with conveyance to follow three to six months later, after decommissioning, demobilization, and vessel redelivery contract actions are completed.

(Authority: 49 CFR 1.81 and 1.93; 36 CFR part 800; 5 U.S.C. 552b.)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–23917 Filed 10–27–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0099; Notice 2]

Toyota Motor North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Toyota Motor North America, Inc. (Toyota) has determined that certain model year (MY) 2019–2020 Toyota Tundra motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 Kilograms (10,000 Pounds) or Less.* Toyota filed a noncompliance report dated September 18, 2019. Toyota subsequently petitioned NHTSA on October 7, 2019, and later amended its petition on January 3, 2020, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the grant of Toyota's petition.

FOR FURTHER INFORMATION CONTACT: Ahmad Barnes, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–7236.

SUPPLEMENTARY INFORMATION:

I. Overview: Toyota has determined that certain MY 2019—2020 Toyota Tundra motor vehicles do not fully comply with paragraph S4.3(d) of FMVSS No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 Kilograms (10,000 Pounds) or Less* (49 CFR 571.110). Toyota filed a noncompliance report dated September 18, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Toyota subsequently petitioned NHTSA on October 7, 2019, and later amended that petition on January 3, 2020, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

Notice of receipt of Toyota's petition was published with a 30-day public comment period, on February 27, 2020, in the **Federal Register** (85 FR 11446). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2019–0099.''

II. Vehicles Involved: Approximately 1,667 MY 2019—2020 Toyota Tundra motor vehicles, manufactured between March 28, 2019, and August 19, 2019, are potentially involved.

III. Noncompliance: Toyota explains that the noncompliance is that the subject vehicles have tire information labels that contain spare tire size information that does not match the installed spare tire size.

IV. Rule Requirements: Paragraph S4.3(d) of FMVSS No. 110 includes the requirements relevant to this petition. Each vehicle, except for a trailer or incomplete vehicle, shall show the information specified in paragraph S4.3(d) Tire size designation, indicated by the headings ''size'' or ''original tire size'' or ''original size,'' and ''spare tire'' or ''spare,'' for the tires installed at the time of the first purchase for purposes other than resale. For full-size spare tires, the statement ''see above'' may, at the manufacturer's option replace the tire size designation. If no spare tire is provided, the word ''none'' must replace the tire size designation.

V. Summary of Toyota's Petition: The following views and arguments presented in this section, V. Summary of Toyota's Petition, are the views and arguments provided by Toyota. They do not reflect the views of the Agency.

Toyota described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety. Toyota believes that the noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. Toyota states that there is no issue with the spare tire installed on the vehicle; it is a tire/wheel combination that is designed for this vehicle and meets all other applicable FMVSSs. In addition, the cold tire inflation pressure specified on the placard is correct and is the recommended pressure for both spare tire sizes.

a. Toyota claims that the spare tire installed on the vehicle (P255/70R18) meets all applicable FMVSSs. Furthermore, Toyota states, it is the appropriate temporary spare tire that was designed for the vehicle and meets the vehicle loading requirements. Only the spare tire size information indicated on the placard is incorrect and reflects the size of the spare that was used on the Tundra prior to a production change. All the other information on the placard is accurate, including the cold tire inflation pressure.

b. In addition, Toyota says that if the vehicle owner wanted to check the size of the spare tire that is installed on the vehicle, the information is in the owner's manual and is also molded into the spare tire sidewall.

c. Given the intent of FMVSS No. 110, S4.3(d), Toyota believes that, because the spare tire installed on the vehicle is the appropriate tire for the vehicle performance and loading requirements, there is no risk to motor vehicle safety.

2. According to Toyota, there is also no issue if the installed spare tire is replaced with one of the sizes indicated on the incorrect placard. This would also be a tire/wheel combination that is designed for this vehicle and would meet all other applicable FMVSSs because the replacement spare tire would be the same size as the spare tire originally equipped on the Tundra prior to the production change and would be the same size as the four main tires on the subject vehicles.

a. Toyota explains that the spare tire size indicated on the incorrect placard was also designed for the subject vehicles and meets all applicable FMVSSs. This spare tire wheel combination (P275/65R18) is the same size as the four main tires installed on the subject vehicles. It was used as a spare tire on the prior model year Tundra and on the 2019 MY Tundra prior to the adoption of the current spare tire size (P255/70R18).

b. In addition, the recommended spare tire inflation pressure and wheel size (R18) are the same for the subject vehicles as the prior model year Tundra.

c. Because both spare tire sizes are appropriate for the vehicle loading specifications, were designed for the subject vehicles, meet all applicable FMVSSs, and the wheel size and recommended tire pressure are the same, Toyota believes there is no risk to occupant safety should a P275/65R18 tire be used in place of the one equipped on the vehicle.

3. Toyota says it is unaware of any owner complaints, field reports, or allegations of hazardous circumstances concerning the incorrect spare tire placard in the subject vehicles. Toyota has searched its records for reports or other information concerning the tire placard and spare tire in the subject vehicles. No owner complaints, field reports, or allegations of hazardous circumstances concerning the placard or tire were found.

4. Toyota says that NHTSA has previously granted at least five similar petitions for inconsequential noncompliance for inaccurate tire placards. Toyota provides a brief summary of each petition listed below:

a. *Daimler Chrysler Corporation, 73 FR 11462 (March 3, 2008)* Dodge Dakota pickup trucks had the spare tire size indicated on the placard that did not match the size of the spare tire installed on the vehicle.

b. *Mercedes-Benz USA, LLC (MBUSA) 78 FR 43967 (July 22, 2013)* Vehicle placard on the affected vehicles incorrectly identified the tire size designation of the spare tire in the vehicle.

c. *Volkswagen Group of America, Inc., 81 FR 88728 (December 8, 2016)* Subject vehicles had a tire placard label that was misprinted with an incorrect tire size as compared to the tires the vehicle was equipped with.

d. *Mercedes-Benz USA, LLC, 82 FR 5640 (January 18, 2017)* The tire information placard affixed to the vehicles' B-pillar incorrectly identified the spare tire size.

e. *General Motors, LLC, 84 FR 25117 (May 30, 2019)* Subject vehicles were equipped tire placards that stated the spare tire size is ''None'' when in fact it should have been ''T125/70R17'' and omitted the cold tire pressure for the spare tire when it should have read ''420 kPa, 60 psi''.

Toyota concludes that the subject noncompliance is inconsequential as it relates to motor vehicle safety and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VI. NHTSA's Analysis: In determining inconsequentiality of a noncompliance, NHTSA focuses on the safety risk to individuals who experience the type of event against which a recall would otherwise protect.[1] In general, NHTSA does not consider the absence of complaints or injuries when determining if a noncompliance is inconsequential to safety. The absence of complaints does not mean vehicle occupants have not experienced a safety issue, nor does it mean that there will not be safety issues in the future.[2]

The purpose of the placard requirements in paragraph 4.3(d) of FMVSS No. 110 is to identify the tire size designation for the tires installed at the time of the first purchase for purposes other than resale.

As described by Toyota, due to a production change to change the spare tire size on vehicles equipped with a specific tire and wheel combination, the corresponding vehicle placard was not subsequently updated to reflect this change.

The spare tire installed on the vehicle (P255/70R18) is certified to meet all applicable FMVSSs. It is a temporary spare tire that was designed for the vehicle and meets the vehicle loading requirements. The spare tire indicated on the incorrect placard was also designed for the subject vehicles and is certified to meet all applicable FMVSSs. As a point of fact, this spare tire wheel combination (P275/65R18) is the same size as the four main tires installed on the subject vehicles. Furthermore, the recommended tire inflation pressures and wheel sizes are all the same.

[1] *See Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

[2] *See Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 21663, 21666 (Apr. 12, 2016); *see also United States* v. *Gen. Motors Corp.,* 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it ''results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future'').

VII. NHTSA's Decision: In consideration of the foregoing, NHTSA finds that Toyota has met its burden of persuasion that the subject FMVSS No. 110 noncompliance in the affected tires is inconsequential to motor vehicle safety. Accordingly, Toyota's petition is hereby granted. Toyota is consequently exempted from the obligation of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision on this petition only applies to the subject vehicles that Toyota no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Toyota notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2023–23868 Filed 10–27–23; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of persons and vessels that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons and vessels are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Bradley T. Smith, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On October 12, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Entities

1. ICE PEARL NAVIGATION CORP, Ucpinarlar Caddesi 36, Kucuk Camlica, Uskudar 34696, Turkey; Marshall Islands; Identification Number IMO 4118745 [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of Executive Order 14024 of April 15, 2021, ''Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation,'' 86 FR 20249, 3 CFR, 2021 Comp., p. 542 (Apr. 15, 2021) (E.O. 14024) for operating or having operated in the marine sector of the Russian Federation economy.

2. LUMBER MARINE SA, Office OT 17–32, 17th Floor, Office Tower, Central Park Towers, Dubai, United Arab Emirates; 80 Broad Street, Monrovia, Liberia; Identification Number IMO 5463420 [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the marine sector of the Russian Federation economy.

On October 12, 2023, OFAC also identified the following vessels as property in which a blocked person has an interest, under the relevant sanctions authority listed below:

Vessels

1. SCF PRIMORYE (A8SW6) Crude Oil Tanker Liberia flag; Vessel Registration Identification IMO 9421960; MMSI 636014308 (vessel) [RUSSIA–EO14024] (Linked To: LUMBER MARINE SA).

Identified as property in which Lumber Marine SA, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

2. YASA GOLDEN BOSPHORUS (V7KQ8) Crude Oil Tanker Marshall Islands flag; Vessel Registration Identification IMO 9334038; MMSI 538002662 (vessel) [RUSSIA–EO14024] (Linked To: ICE PEARL NAVIGATION CORP).

Identified as property in which Ice Pearl Navigation Corp, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

Dated: October 25, 2023.

Bradley T. Smith,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–23862 Filed 10–27–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

This notice is provided in accordance with IRC section 6039G of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as amended. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a) or 877A) with respect to whom the Secretary received information during the quarter ending September 30, 2023. For purposes of this listing, long-term residents, as defined in section 877(e)(2), are treated as if they were citizens of the United States who lost citizenship.

Last name	First name	Middle name/initials
ABRAHAM	ANDREW	ROSS
ACHESON	ANDREW	DAVID
ACHLEITNER	ULRIKE	K.
ACRES	DANIELLE	IRENE
AGEE	WILLIAM	RAIFORD

Last name	First name	Middle name/initials
ALBERGA	BIANCA	ASHLEY
ALBRECHT	ECKHARD.	
ALBRECHT	KARIN.	
ALBUQUERQUE (BANDEIRA)	ALICIA	LYN
ALCOCK	CLIVE	FREDERICK
ALLARDYCE	TARA	ASHLEY
ALLEN	DANIEL	MARSDEN
ALLEN	ROSEMARY.	
ALPAGOT	TOLGA.	
AMDUR	KARL	EDWIN
ANDERSON	ANNE	MARIA
AUERBACH	GEORGE	DAVID
AVENDANO GARCIA	ALLAN.	
BAER	ALEJANDRO	WALTER
BAHRAMI	ADAM.	
BAILEY	LAUREL	ANN
BAINBRIDGE	JANE	MARGARET
BALPARDA DE CARVALHO	DANIEL.	
BARKER	GUY.	
BARONES VAN VERSCHUER	NORA.	
BARRETT	DONALD	LESLIE
BASILE	RAFFAELLA.	
BAUER	NATALIE.	
BAUMGARTL	JUERGEN	REMUS
BEARFIELD	KARA	LYNN
BEERLI–HESS	CORINA	MAUREEN
BELLUCE	MARCIA	NORIHI
BENARY	DANIELA.	
BENDER	HANNAH	SARAH
BERGERON	MARIO.	
BERGMANN	ROBERT	MICHAEL
BERNSTEIN	MINDA	DIANNE
BERTSCHY	PATRICK	FRANKLIN
BICKNELL	ANDREW	ROY
BIGGS	JULIA	MIRIAM
BILTON	SIMONE	ELOISE
BIRCH	SARAH.	
BIRD	JONATHAN	DAVID
BLAIR	MINA	LOUISE
BOEHM	NICOLA.	
BOENISCH	KEVIN	MAIK
BOGIE	CRAIG	ARMSTRONG
BON	JULIETTE	MARIE
BORITZ	TALI	ZWEIG
BOWLES	TOMOKO	OKUMURA
BOWMAN	JESSE	JENNIFER MAY
BOYTS	CATHERINE	MARGARET
BRANDIS	LENA	SOPHIE ELISABETH
BRASALI	ADRIAN	PUTRA
BRENNAN	COLLEEN	PATRICE
BRENT	MICHAEL.	
BRESTON	DANIEL	M.
BRIGGS	SUZZANNE	MOREY
BRIGHT	NIGEL	DAVID
BROCHU	SEBASTIEN	W.
BROWN	ASHLEY	DAWN
BRUELL	JOSHUA	FELIX MCINTOSH
BRUNYEE	SASHA	CORINNE
BUFFAM	ELEANOR	LUCY
BULLOCK	BONNIE	ANN
BURATY	CARY	ANNE
BURCIN	MARK	MATHEWS
BUREAU	CHRISTINE.	
BURKE	EUGENE	JOSEPH
BURNER	OLESSIA	VICTOROVNA
BUYUKLIEV	JORDAN	KOLEV
BYDELEY	NATHALIE	LORRAINE
CAI	ZHIJUAN.	
CAIN	PAUL	ALAN
CALDWELL	KARL	DOUGLAS
CALVERT	JUSTIN	JAMES
CAMPBELL	INA	JANELE
CAMPBELL	SONYA	JOY
CAMPBELL–KELLY	VINCENZA	FRANGELLA

Last name	First name	Middle name/initials
CANION	MARGARET	JEAN
CARNER	ROBIN	ANN
CARNER	THEODORE	CLYDE
CARON	ISABELLE.	
CAVAIONI	MICHELE.	
CAVIGELLI	MORITZ	GIACUN
CEROVSKY	JAN.	
CHAISAWANGWONG	KAI.	
CHANDRAN	SHARMAN	R.
CHANEY	KATHERINE	ELLA
CHANG	ALEXIS	KOJI
CHAUSSE	ALEXANDRA.	
CHEN	AI–YANG.	
CHEN	CHING	NEW
CHEN	JANNIE.	
CHEN	YALI.	
CHEN	YI.	
CHEN	YUBING.	
CHEN	YU–WEN.	
CHESHIRE	MOE.	
CHIN	MARGARET.	
CHOY	DAVID	W.
CHOY	SANDRA	ELIZABETH
CHU	SUN	HEE
CHURCHILL	CHIRSTOPHER	ALEXANDER MACKENZI
CIIFTON	JUSTIN	MICHAEL
CLARE	LAWRENCE	JOHN
CLEMENS	JANE	MARIE
COELHO	LUCIANA	SPENGLER
COLAK KAYA	DILEK.	
COLCLOUGH	HEATHER	ELIZABETH
COLE	JULIE	CHRISTINE
COLLIN DE CASAUBON	DIDIER.	
COLUCCI	LESLIE	ANN
COMEAU	KAREN	DAWN
COMPTON	JANICE	D.
COMRIE	MICHELLE.	
CONARD	JULIE	ANNA
CONSTABLE	ELIZABETH	LOUISE
CONTRERAS STEINGGER	CHRISTINE	BARBARA
COOPER	ALEXANDRA	GRACE SHELLEY
COOPER	QUINN	BLINKHORN
CORMIER	JAMES	RAYMOND
CORVEE	REGIS	ALAIN LOUIS
COTTINGHAM	MYRA	LEE
COURTIS	FIONA	SUSAN
COX	SIMONE.	
CRETTON	CURTIS	SCOTT EN
CROW	ANNA	MARIA
CROW	JASON	BRIAN
CUCKNELL	MICHAEL	JAMES
CURVERS	DOROTHY	MARY
DALY	LESLEY	LOUISE
DAOUK	HAZEM	BASHIR
DASWANI	KRISHA.	
DAULTON	FRANK	ERWIN
DAVIE	BRUCE	STUART
DAWSON	HEATHER	YVONNE
DAWSON	WILLIAM	ROSS
DE JONGH	ROBERT	PIER
DE KALBERMATTEN	ROCH	MARIE
DELANEY	LACHLAN	ROSS
DEPRENDA	MICHAEL	JOSEPH
DERKSEN	KRISTEN.	
DEVROYE	JEAN–MARC.	
DICK	CARY	JEAN
DITTMAR	LJILJANA.	
DOBSON	CHRISTOPHER	JOHN
DOCHEVA	VESELA	PLAMENOVA
DOTY	CORINNA	SABINE
DOYLE	ROZANNE	ELIZABETH
DREISSIGACKER	MICHAEL.	
DROWN	DENNIS	JOHN
DUBE	GILLES	DENIS

Last name	First name	Middle name/initials
DUBOIS	EVELYN	MARY
DUBOIS	ROBERT	JOSEPH
DUIGNAN	THOMAS	MICHAEL
DUMONT	LAURENT	RAYMOND
DURST	CHARLENE	WILLA
DURST	ROGER	DAVID
E STIBBE	MATHILDE	MARIA JOANNA
EATON	NORMAN	JOHN
EILEY	JOAN.	
ELAFROS	ATHENA.	
ELIAS	ISABELLA.	
EMMETT	PETER	DANIEL
FAIRRIE	NICHOLAS	ANTHONY
FALZON	ANDREA	LOUISE
FARNEBORN	MAUD	C.
FENEBERG	STEPHANIE	ELLEN
FENG	TSU	Y.
FERGUSON	MARGARET	ELLEN
FERLAND	GILBERT.	
FERLAND	SYLVAIN.	
FERRIS	EILY	KAYO
FIPPS	LANCE	ALBERT
FLEMMIG	THOMAS	FRANK
FOFFANO	JENNIFER	ALANA
FORBES	SHAUNA	ELAINE
FORD	ALYSSA	MARTHA
FORD	MICHAEL	JOHN
FOSCARI WIDMANN REZZONICO	NICOLO	SEBASTIANO
FRANGELLA	PIETRO.	
FRENZEL	MICHAEL	HEINZ FRANZ
FRESCO	MONICA	SOFIA
FRITZSCHE	HOLGER	BRIAN
FROESE	ESRA	VAUGHN
FRY	HANNAH	LOUISE
FU	QIHONG.	
FUCHS	RALPH	JOACHIM
FURBY	RICHARD	JOHN
FUSE	YUKO.	
GARCIA DE BEDIA	AYMETH	YORIELA
GATES	JUSTIN	LOUISE BRETT
GATZEN	MATTHIAS	MAXIMILIAN
GAVIGNET	JULIEN.	
GELINAS	YVAN	GUILBERT
GELLER	MARION	IRMA
GENTLES	ROY	ALEXANDER
GEORGE	KATHRYN	ELIZABETH
GEREIGE	ROBERT	JOSEPH
GERVAIS	DAVID	PAUL
GIULIANI	ROBERTO.	
GLASER	WENDY	L.
GOCMEN	HASIBE	BELGIN
GOODIN	ROSS	ETHAN
GOODWIN	DAVID	GORDON
GOREN	OFER	ANDREW
GORMAN	SEAN	PATRICK
GORTON	HEATHER	MARY
GOSSIN	ENID.	
GOUDREAU	JOEY	PAUL
GOULDING	CHRISTOPHER	DONALD
GRAHAM	JAMES	ANTHONY
GRANT	JANE.	
GREGER	WALTER	JAKOB
GRIFFIN–CHADD	PATTI	J.
GRIMM	FABIAN	ALEXANDER
GUARDA	JOHANNE.	
GUEVARA MANZO	GLORIA	REBECA
GUILMETTE	DANIELLE	JASMYNE
GUO	LIH	SHIEW
GUO	QIAN.	
GUPTA	SHWETA.	
HAH	HEA	SUN
HAH	YOUNG	DUKE
HALL	JONATHAN	MARK
HALL	SANDRA	LYNN

Last name	First name	Middle name/initials
HAMAOKA	CHISATO.	
HAMMER	DAVID	MICHAEL
HAMPSON	NANCY	LYNN HYNDMAN
HAMPSON	ROBERT	BYRON
HANBURY–WILLIAMS	CATHERINE	MADELEINE
HANDFORD	CLARE	NANCY
HANFORD	CHRISTOPHER	WAITES
HARA	HIDEMI.	
HARRIGAN	DONNA	MARIE
HARRIGAN	SARAH	MARIE
HAYHOE	COLE	DEAN
HAYHOE	MADISON	LERUE
HAYHOE	SYDNEY	BRIANNE
HEBBLETHWAITE	JAMES	ANDREW LEWIS
HECHLER–MASSEL	KATRIN.	
HEERSINK	ROLAND	EDUARD
HEIKOOP	GLYNIS	ANN
HEIMGARTNER	FREDERIC	RENE
HELLER	ALEXANDRA	JO
HELSEN	SVEN	F.
HENRY	JOHN	STEWART
HERRERA	HECTOR.	
HILDER	MARIE.	
HILDER	NICHOLAS	ANTHONY
HILLS	VINCENT	JEFFREYY
HINO	MASAHIKO.	
HIRAKAWA	FUMIO	MATHIAS
HOELLER	OLIVER.	
HOFER	MAX	ANDRES
HOFFMAN	LARA.	
HOFSTEDT	MAUREEN	ELIZABETH
HOLLINGTON–ROSENBERG	BARBARA	ANN
HOSHI	MIYUKI.	
HUBER	ULRIKE.	
HUO	YUJIA.	
HURST	RONALD	FREDERICK
HUTABARAT	MARISSA	NOVITA
IKARI	EMIKO.	
ISHKANIAN	JAMES	PETER
ITAKURA	SHUZO.	
JACKSON	JASON	KENNETH
JACKSON	WARREN	CARVER
JACOBS	MARY	CATHERINE
JACOUPY	PIERRE	ERIC DANIEL
JAEGER	KAREN	ELSE
JAFFAR	HASSAN	ISSA
JALBERT	JEAN	CLAUDE PHILIPPE
JANSEN	GAILE.	
JANSEN	MARTINUS	JOSEPHUS
JANSON	FRANCISCA	CRISTINA ZEVEN
JANSZEN	PAMELA	JOY
JEFFERSON KNOWLAND	THOMAS	WILLIAM
JIANG	YIBO.	
JOHANSEN	MALIN	HANNA MARGARETHA
JOHNSON	MATTHEW	DALE
JOHNSTON	CYNTHIA	ANN
JOHNSTON	TAMARA	DAWN
JONES	RACHEL	ELIZABETH
JUDD	IAN	D.
JUNG	DEREK	KUBUM
JUNG	IN	SUNG
JUNG	OK	JU
JURASKOVA	KATERINA.	
KALLAN	RONALD	JAY
KAMEL	CHERIF	F.
KARAKACHIAN	ROUPEN	NAZAR
KARLI	SANDRA	YVONNE
KARLI	WENDY	SARAH
KARLI NUNEZ	MARLENE	JUANA
KASKI	SAMULI.	
KATO	AIKO.	
KATO	CHIHIRO.	
KAUKE	MONIQUE	JACQUELINE
KAWAI	HIROYUKI.	

Last name	First name	Middle name/initials
KAWANA	TETSUNORI.	
KAYA	NAMIK.	
KEE	JAMES	JEFFERSON
KEMP	TRISTAN	SIMON
KENYON–JONES	MARION	B.
KERRIDGE	LILY	CHRISTABEL ROSE
KERRIDGE	VIOLET	HELOISE DAISY
KHAIRI–TARAKI	TARRIN	MOHAMMAD
KIEFFER	THOMAS	MICHAEL
KIEFFER–JONES	OWEN	ANDREW
KIM	ALAN	EDWARD
KIM	JOONBAE.	
KIM	KYUNGHEE.	
KIM	OKJA.	
KIMURA	KEIKO.	
KING	JANET	CLARE
KING	SOPHIA	QUILTY
KISE	MIKAELE	DENHAM LEE
KLAUKE	SOPHIE	LUISE
KLEINENBERG	OLIVER	BENJAMIN
KLUIVERS	RAYMUND	FRANCISCUS ALOYSIUS
KOBAYASHI	MAYUMI.	
KOBAYASHI	TAKASHI.	
KOCH	LAUREEN	MARISA
KOMATSU	EMIKO.	
KOMATSU	TAEKO.	
KOMAZAKI	EMI.	
KONISHI	SAEKO.	
KOTANI	YURIKO.	
KOUTSOURAS	BILL.	
KOWAGUCHI	CHIAKI.	
KOWAGUCHI	KEITA.	
KRANJC	STANLEY	RUDOLPH
KRATZER	CARL	PHILIP
KRAUS	JACQUELINE	LARK
KRAUSS	JENNIFER.	
KREHM	RACHEL	LILY GLADYS
KRUGLAK	KATHRYN	ANYA
KUEHN	JEMIMA	SYBIL
KUHA	REIJA	IRENE
KUO	JENG	YIH
KWOK	ZOE	ANNABELLE
LAMARE	DIANA.	
LAMBETH	NATALIE	SARAH
LAMIN	NICHOLAS	JOEL WILLIAM
LAMIN	STEPHANI	MARIE
LANDRY	GUYLAINE	MARIE
LANGE	VOLKER	ANDREAS
LASTERNAS	BERTRAND.	
LECLERC	CHRISTINE	MICHELLE
LEE	CHUNGHWAN.	
LEE	HUI	YI
LEE	HYUN	JUNG
LEE	KANG	HO
LEE	SEUNG	HWAN
LEE	SEUNGMIN.	
LEE	TI–TIEN.	
LEE	WON	SIK
LEFEBVRE	GILLES.	
LEJAY	VICTOR	JAMES JOSEPH
LENCI	CARY	ANNE
LENTILE	MARKUS	LANIER
LEVI	DANA.	
LEVIN	LORAINE	NANCY
LEWIS	TAYLOR	AMURI
LI	XIMEI.	
LIANG	XINGPING.	
LIEBLICH	JILL	KAREN
LIECHTI	RACHEL	MORGAN
LIM	LYNETTE	MAY TJUEN
LIN	SHU–FAN.	
LINGWOOD	ELIANE	AGNES
LIOY	MARCELLO	V.
LIPPONER	MARCUS	AMERICANUS

Last name	First name	Middle name/initials
LITSIOS	STEVEN	C.
LIU	SHUO.	
LIU	XIN.	
LIVINGSTONE	ANDREA	DORA
LOPUSHANSKAYA	EVGENIA.	
LOVATT	ANNA.	
LOWBEER–LEWIS	JULES	JACK
LU	MING–GEAN.	
LUBELSKY	BRIAN	CHARLES
LUBIN	ANDREW	JARGER
LUMB	YVONNE.	
LUYI	SUMULIDA.	
LYNDON–JAMES	PERRY.	
MACAYA	JAVIER	F.
MACK	KAREN	A.
MACKENZIE	LYNN	RYAN
MACKINNON	BRYAN	JAMES
MACKLIN	SUSAN	MARY
MAHMUD	SARA	SADIQA
MALONEY	JEAN–SEBASTIEN.	
MANAVADUGE	EVA.	
MANSON	BARBARA	ANN
MANSUY	CHARLES	LINDSAY
MARATHE	BHARAT	CHANDRASHEKHAR
MARKS	JAYNE	DIANA
MAROZZI	MANUEL	JOHANN PHILLIPP
MARQUEZ LOPEZ	MARTIN	S.
MARTIN	CHRISTINE.	
MARTINEZ MOLLER	CARLOS.	
MASTERSON	LAWRENCE	JAMES
MATHIS	JAMES	EUGENE
MATOS	JOSEPH	JAN
MATSUURA	KUMIKO.	
MATTE	DOMINIQUE	MICHELLE
MATTHEWS	ANDREW	VAUGHN
MAZZURCO	DANIELLE	MARIE
MCBARRON	MARTHA	ASHBROOK
MCCALLISTER	DAVID	RYAN
MCCARTHY	DAVID	MICHAEL
MCCARTHY	SABRINA.	
MCCORKINDALE	CAROL	A.
MCFARLANE	PHILIP	HOWARD
MCFARLANE	SHEILA	ELAINE
MCLEOD	THOMAS	WILSON KIDD
MCLEOD–WALLER	ANN	ELIEZAEBTH
MCNEILAGE	RILEY	ADELE
MCRITCHIE	LEAANNE	THERESA
MCRITCHIE	MICHAEL	JEROME
MEAD	KENNETH	JAMES
MEAD	RUTH	ANN
MELCHY	PIERRE	ERIC MICHAEL ALIX
MELICHAR	MIROSLAV.	
MENARD	BERTRAND	PHILIPPE
MIKLOSI	BERTALAN	JOSEPH
MILGRAM	NORTON	WILLIAM
MILLS	NATHAN	DANIEL
MINICK–SCOKALO	TAMARA	LEE
MINO	RYUMA	JASON
MINTER (PETERSON)	MARRIANNE	FRANCHOT
MOHAMED	YASSER	ALI NOUR ELDIN
MOODY	JILL	ELIZABETH
MOONEY	ROBYN	GAY
MOORE	JOYCE	LUCAS
MOORE	MELANIE	HELEN
MORALES	EDGAR	RUBEN
MORAWSKI	ANNA	CHRISTINA
MORGAN	MATHILDE	MARIE MADELEINE
MORIMOTO	KATSUHIKO.	
MORIMOTO	YUKO	IWATA
MOROSS	DOMINIC	HENRY
MOSAWI	ANTHONY	S.
MOSHFEGH–BUTIKOFER	HELEN	ANNE
MOSKOVITZ	KAREN	RUTH
MOSTEK	JOHN	PETER

Last name	First name	Middle name/initials
MUELLER	THOMAS	ADRIAN KEKOA
MUKHERJEE	NATASHA	INDIRA
MUN	JAE	HWA
MURPHY	SARAH.	
MYLER	LYNDA.	
NADEAU	STEPHANIE	ANGELL
NAGAMORI	MIYAKO.	
NAKASHIMA	MICHIKO.	
NAKASHIMA	TOMOHIRO.	
NAMBA	HARUNA.	
NANAVATI	AJAY	VIPIN
NARUMI	AYAKO.	
NARUMI	SHIGENOBU.	
NASR	YVAN.	
NASSER	MOHAMMAD.	
NAUNTON	DARCY	ALEXANDER
NEGRE	JEAN	LUC
NEITENBACH	RONJA–MARIE	ANNICK
NENKOV	MARIA	ELENA
NESKE	RICHARD	GERALD
NEUMANN	CHRISTOPHER	KURT
NEWCOMBE	ELIZABETH	ANNE
NEWMAN	STEVEN	MICHAEL
NEWTON	MICHAEL	JONATHAN
NICHOLS	LINDA	LEA
NICHOLSON	FRANCIS.	
NIELSEN	DORTHE	SCHERLING
NII	KAZUO.	
NILSEN	TRINE.	
NISHIMURA	YOSHIE.	
NOMURA	KUMIKO.	
NOWACK	VIRGINIA	RUTH
NOWAK	ANGELA	INGEBORG
NUFFIELD	JAMES	EDWARD
NUTTGENS	JONAH	EDWARDS
NYENKAMP	COLE	ROBERT LEE
O'BRIEN	SHAUN	PETER
O'BRIEN	IAN.	
OCHSNER	SUSANNE	HELEN
ODELL	ROBERT	THOMAS H
OH	JUNG	HEE
O'SHEA	PAUL	CHRISTOPHER
OSUGI	KAZUMI	I.
OSUGI	YUTARO.	
OWEN	JAMES	DAVID EADMUND
OZAWA	MASAYO.	
PAGE	BROOKE	DEBORAH
PAGE	CYNTHIA	RAE
PALMER	EMPYREAL	ELIZABETH RHODA
PAPOUTSIS	GEORGIOS.	
PARHAM	BARBARA	JANE
PARK	IN	SEUP
PARK	KUNG	SAM
PARK	SOHYUN.	
PASHAYAN	CHARLES	MARK
PASQUET	SYLVIANE	MARIE PIERRE
PATEL	KAJAL.	
PATEL	KAUSHIK	VINUBHAI
PATEL	KOMAL.	
PATEL	PUNITA.	
PATUELLI	FLAVIO	ANGELO
PATUELLI	LAURA	LORET
PAYNE	DALRY	BARBARA
PEACOCK	LYNDA	MARIE KUNZE
PEARCE	TIMOTHY	BATTEN
PEARSON	DANIEL.	
PEIROTES	CARINE	FRANCOISE NATALIE
PERALTA	SPOCK	ALLEN
PERLINO	ALESSIA	ELIZABETH
PESO	TAMARA	ANNA
PETROVSKA	LIDIA.	
PHUA	STELLA	HUI LI
PIAZZA	TITO.	
PILON	LISA	DIANE

Last name	First name	Middle name/initials
PINEDA SIERRA	ELIAS.	
PINNER	DONNA	MARIE
PINNER	MARK.	
PIROS	JAN	MIECZYSLAW
POIRIER	JEAN	BERNARD J.
PRESCOTT	SHOKO.	
PRIESTER	KATELYN.	
PUGH	SIMON	JAMES
QUINTANANILLA ARGUELLES	ANA	PAULA
QURESHI	SHAHAB.	
RACHELLO	ACHILLE.	
RAHAL	TANIA.	
RALPH	MICHAEL	GERARD
RAMSEY	CHRISTOPHER	BRONK
RAWADY	DENNIS	ALEXANDER
RAWADY	WENDY	ELIZABETH
RECALDIN	STEPHEN.	
REESE	JULIA	L.
REGE	SAMEER	PRAKASH
REIACH	JUDITH	A.
REIF	EDWARD.	
REN	HONGZHI.	
RENDEL	EWEN	WILLIAM
RENDEL	HEATHER	ROSEMARY
RHA	ILJU.	
RIBOTTO	GREGORY	PAUL
RICHARDSON	KAREN	LEE
RIEDI	MARCEL	PLAZI
RITCH	ANTONY	STEWART
RITCHIE	GARY	THOMAS
ROBERTSON	JUNKO	MIYAKOSHI
RODRIGUEZ	TANIA.	
RODRIGUEZ BASAVILBASO CUBILLO	LUZ.	
ROSS	HOWARD	TERRENCE
ROSSLER	CECILIA	ERICA
ROZDAY	DANIEL	JOHN
RUESS	FREDA	MARIA
RUFATT	LISA	MARIE
RUSTOMJI	SANDRA.	
SAGGAU	PETER	HANS OTTO
SAGGAU	RENATE	MARIA ELISABETH
SALZBERG	ELICIA	LIN
SAMYN	DOMINIQUE	MARIE PAULE
SANDILYA	MITA	BHATTACHARYA
SANSOY	AFET.	
SASAKI	HIROSHI.	
SATO	MOTOHIRO.	
SAWAF	KARIM.	
SAWAF	LANA	M.
SAXTON	NEIL.	
SCEATS	ANTHONY	CHARLES
SCELI	CATHY	GAIL
SCELI	DANIEL	EDWARD
SCHARMANN	ULRIKE.	
SCHERER	FRANK	M.
SCHLEMMER	PATRIC	JOHANNES
SCHMEISTER	RYAN	CHRISTOPHER
SCHMIDT	JUSTIN	RYAN
SCHNEIDER	JONATHAN.	
SCHNEIDER	CHRISTINE	ANN
SCHOON	KEITH	CLAYTON
SCOTT	PHILIP.	
SCULLY	MARILYN	LYNN RYERSON
SELIGER	JOERG.	
SHAFFER	PAUL.	
SHAK	MICHAEL	BYRON
SHAKESPEAR	DANIEL.	
SHAM	LILIA	M.
SHAMMAH	DANIA	EL–HAJJ
SHAO	CHANGFENG.	
SHAPIRA	AMIT.	
SHAPIRA	ANAT.	
SHAPIRA	LIOR.	
SHAPIRA	NAAMA.	

Last name	First name	Middle name/initials
SHAPIRA	YAEL	R.
SHARMA	AJAY.	
SHEAHAN	BARBARA	BRIDGET
SHEPHERD	SHELLEY	ANNE
SHI	JIAN.	
SHI	XUEPENG.	
SHIN	SUNGWOO.	
SHINDLER	AMY	NICOLE
SHINKAWA	NOBUHIRO.	
SHINKAWA	TAKESHI.	
SHIUE	JASON	H.
SHORE	KEVIN.	
SHOVLIN	GERARD	FRANCIS
SHRYOCK	LAURA	JANE
SHUCK	MICHELLE	ANNE
SHULMAN	NORMAN	VICTOR
SHURCLIFF	KATHLEEN	SHARON
SINCLAIR	ERIC	JUSTIN
SINGH	ARCHANA.	
SIU	HENRY	EUGENE
SJOMAN	PER	JOHAN MATS
SKINNER	ERIC	TALIA
SLATER	TAMMY	J.
SMITH	JUDITH	MAXINE
SMITH	PETER.	
SMITH	WENCHE	ELIN
SNYDER	TIMOTHY	SCOTT
SOLVASON	SIMON.	
SPEER	KARIN.	
SPEER	RICHARD	ROBERT
SPEISSEGGER	OLIVIER	GEORGES
SPRINGER	TOBIAS	SHAW
ST PIERRE	JEAN	CLERMONT
STABEL	ADRIANUS	F.
STAEDTLER	ANDREA.	
STANLEY	GEORGE	WILLIAM SLOANE
STARR	JESSICA	E. A.
STAUDT	ADAM	MICHAEL
STEIN	NATALIE	MARIA
STEVENS	ANJA.	
STEVENSON IV	WILLIAM	ALLEN
STEWART	NANCY	JANE
STOCKMAN	KATE	ELIZABETH
STRAUB	RENEE	MARIA
SUN	PEIQI.	
SUZUKI	KATSUMI.	
SWEETING	ANDREW	CHARLES GARTH
SZELE	ALEXANDER	JOSEPH
TABET	MICHELLE	CAROLE
TATKO	MELISSA	JAMIE
TATSUMI	YUKAKO.	
TATSUMURA	MINAKO.	
TAYLOR	SUZANNE	MARIE
TAYLOR	WAYNE	WARREN
THIRD	DAVID	ROBERT
THOMAS	HARLE.	
THOMAS	QUINN	SIMON BERSTEIN
TIAN	WEI.	
TIBER	MITCHELL	R.
TISTL	INGRID	ELISABETH
TOPPER	SHERYL	LYNN
TOROKVEI	CAITLIN	ALEXIS
TRENKA	JANE	JEONG
TRIANTAFYLLIDOU	MARGARITA	MAGDALINI
TRONCO	ROSANNA.	
TRONNIER	TOSCA	HELENA SOPHIE
TSEUNG	TUNG	ANTHONY
TUROCK	MITCHELL	BRUCE
TURTLE	CAMERON	JOHN
UEBELHART–MINIKUS	KATHERINE	ANNE
UNGER	LAURA	SIOBHAN
VALDERRAMA CHOPITEA	ANITA.	
VAN BEEK	ROBERT	ANTHONY
VAN BERKEL	DELIA	JESSICA

Last name	First name	Middle name/initials
VAN CAMP	INGRID	VIKTORIA
VAN CLEEF	PETRUS	H. J.
VAN DER HEIJDE	PAUL	K.
VAN DER SCHAAR	AUKE	SJOERD
VAN DER SCHAAR	MIHAELA.	
VAN LEEUWEN	ANNA	ELISABETH
VARCOE	BEVERLY	ELIZABETH
VARMA	KRISTEN	MARIE
VASILE	ANTHONY	JOSEPH JAMES
VETTER	JONAS	RAPHAEL
VILLAVIEJA	DIANE.	
VLACHOS	JOANNES.	
VOULOUMANOS	ATHENA.	
WAGNER	SOPHIA	ANNA
WAGNER	STEPHANIE.	
WAITE	LAURA	KRISTINE
WALDMANN	PETER.	
WALLACE	HENRY	DANIEL
WALLACH	JACQUELINE	BEATRICE
WALLACH	NATALIE	LOUISE
WANG	ANBANG.	
WANG	XIAO	QIAN
WANG	ZHONG	KAI
WANG	YONGGUANG.	
WANG	YUHUI.	
WATANABE	GEN.	
WATANABE	KINYA.	
WATANABE	MIZUHO.	
WATKINS	JOHN	JAMES
WATKINS	SEBASTIAN	HAROLD
WATKINS	TARA	LOUISE
WATSON	BRENT	DONALD
WECKX	TIMOTHY.	
WEILL	PETER	D.
WEISBERG	SHERI	INA
WEISS	SILAS	KAWIKA
WELTY ROCHERFORT	HARRIET	ALICE
WENZEL	ERIC.	
WEYANT	ROBERT	BENSON
WHITE	CLARE	DOVETON
WHITE	WILLIAM	DEMPSTER
WIERSCH	NORMAN.	
WILKINS	DENICE	LYNN
WILL	CYNTHIA.	
WILLEMSEN	MARY	ELLEN
WILSON	ANDREA	LEE
WILSON	MICHAEL	ARNOLD
WILTSHIRE–BUTLER	JOHN	CHARLES
WIND	MICHAEL	ALEXANDER
WINGFIELD	MARIANNE.	
WOHLLEIB	WILLIAM	EDMOND
WOLFF	DIETER.	
WOO	KYUNG	HO
WOOD	DILLON	LEE
WOOD, JR	ROBERT	FRANKLIN
WOODBURN	RALPH	DAVID
WORMLEY	DAVID	CHARLES
WRIGHT	WILLIAM	R.
WU	QIONG.	
WULFF	ADAM	THEODORE
XUE	MIN.	
XUEREB AUSTIN	LAUREN	ALEXANDRA HANSON
YANG	JANE.	
YANG	MEIFANG.	
YONG	PEI	HAN
YOSHINO	HIROYASU.	
YOSHINO	MIHOKO.	
YOUNGQUIST	KAREN	ELIZABETH
YU	PEI	LEI
ZEENDER	LEO	VICTOR PEDRO
ZEH	NICOLE.	
ZENG	LI.	
ZHANG	YAN.	
ZHAO	JINGRAN.	

Last name	First name	Middle name/initials
ZIEBA	RENATA.	
ZOMERDIJK	MARIA	ALIDA
ZUCCALA	ALEXANDRA	KATHERINE
ZUCCALA	ANDREW	GREGORY

Dated: October 24, 2023.

Steven B. Levine,

Manager Team 1940, CSDC—Compliance Support, Development & Communications.

[FR Doc. 2023–23807 Filed 10–27–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Alcohol and Tobacco Tax and Trade Bureau Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before November 29, 2023 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Spencer W. Clark by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Alcohol and Tobacco Tax and Trade Bureau (TTB)

1. Title: Application for Registration for Tax-Free Firearms and Ammunition Transactions Under 26 U.S.C. 4221.

OMB Control Number: 1513–0095.

Type of Review: Extension without change of a currently approved collection.

Description: The Internal Revenue Code (IRC) at 26 U.S.C. 4181 imposes a Federal excise tax on the sale of firearms and ammunition sold by manufacturers, producers, and importers. Under the IRC at 26 U.S.C. 4221, no excise tax is imposed on certain sales of firearms and ammunition, provided that the seller and purchaser of the articles (with certain exceptions) are registered as required by 26 U.S.C. 4222 and the related regulations issued by the Secretary of the Treasury. Under that IRC authority, the Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations at 27 CFR 53.140 prescribe the use of form TTB F 5300.28 as the application to obtain an approved Certificate of Registry to sell or purchase firearms and ammunition tax free. TTB uses the collected information to determine if the respondent is qualified to engage in tax-free sales and issue the required certificate. In addition, once registered, persons registered make certain amendments to their previously provided information by filing an amended TTB F 5300.28 or by filing a letterhead notice.

Form: TTB F 5300.28.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 110.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 110.

Estimated Time per Response: 3 hours.

Estimated Total Annual Burden Hours: 330.

2. Title: Record of Carbon Dioxide Measurement in Effervescent Products Taxed as Hard Cider.

OMB Control Number: 1513–0139.

Type of Review: Extension without change of a currently approved collection.

Description: The Internal Revenue Code (IRC), at 26 U.S.C. 5041, defines and imposes six Federal excise tax rates on wine, which vary by the wine's alcohol and carbon dioxide content. Wines with no more than 0.392 grams of carbon dioxide per 100 milliliters are taxed as still wine at $1.07, $1.57, or $3.15 per gallon, depending on their alcohol content, while wines with more than 0.392 grams of carbon dioxide per 100 milliliters are taxed as effervescent wine at $3.30 per gallon if artificially carbonated or $3.40 per gallon if naturally carbonated. However, under those IRC provisions, certain apple- and pear-based wines are subject to the ''hard cider'' tax rate of $0.226 per gallon if the product contains no more than 0.64 grams of carbon dioxide per 100 milliliters of wine and does not exceed 8.5 percent alcohol by volume. Given the significant difference in those excise tax rates which, in part, depend on the level of a wine's effervescence, the Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations at 27 CFR 24.302 require proprietors who produce or receive effervescent hard cider to record the amount of carbon dioxide in the product. This recordkeeping requirement is necessary to protect the revenue as it allows TTB to verify during field audits a respondent's compliance with the statutory definition of wine eligible for the hard cider tax rate.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 400.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 400.

Estimated Time per Response: 2.5 hours.

Estimated Total Annual Burden Hours: 1,000 hours.

(Authority: 44 U.S.C. 3501 *et seq.*)

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2023–23819 Filed 10–27–23; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Internal Revenue Service (IRS) Information Collection Requests.

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the

Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before November 29, 2023 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Melody Braswell by emailing *PRA@treasury.gov,* calling (202) 622–1035, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

1. Title: Interest Income.

OMB Number: 1545–0112.

Form Number: 1099–INT.

Regulation Number: TD 7873.

Abstract: IRC section 6049 requires payers of interest of $10 or more to file a return showing the aggregate amount of interest paid to a payee. Regulations sections 1.6049–4 and 1.6049–7 require Form 1099–INT to be used to report this information. IRC section 6041 and Regulations section 1.6041–1 require persons paying interest (that is not covered under section 6049) of $600 or more in the course of their trades or businesses to report that interest on Form 1099–INT. IRS uses Form 1099–INT to verify compliance with the reporting rules and to verify that the recipient has included the proper amount of interest on his or her income tax return.

Current Actions: There are no changes to the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, Federal Government, individuals or households, and not-for-profit institutions.

Estimated Number of Responses: 141,555,000.

Estimated Time per Respondent: 13 minutes.

Estimated Total Annual Burden Hours: 46,403,150.

2. Title: Form 2032—Contract Coverage Under Title II of the Social Security Act.

OMB Number: 1545–0137.

Form Number: Form 2032.

Abstract: U.S. citizens and resident aliens employed abroad by foreign affiliates of American employers are exempt from social security taxes. Under Internal Revenue Code section 3121(l), American employers may file an agreement on Form 2032 to waive this exemption and obtain social security coverage for U.S. citizens and resident aliens employed abroad by their foreign affiliates. The American employers can later file Form 2032 to cover additional foreign affiliates as an amendment to their original agreement.

Current Actions: There is no change to the existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Responses: 26.

Estimated Time per Respondent: 6 hours, 4 minutes.

Estimated Total Annual Burden Hours: 158.

3. Title: Information Return for Publicly Offered Original Issue Discount Instruments.

OMB Number: 1545–0887.

Form Number: 8281.

Abstract: Internal Code section 1275(c)(2) requires the furnishing of certain information to the IRS by issuers of publicly offered debt instruments having original issue discount. Regulations section 1.1275–3 prescribes that Form 8281 shall be used for this purpose. The information on Form 8281 is used to update Publication 1212, List of Original Issue Discount Instruments.

Current Actions: There are no changes to burden.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,500.

Estimated Time per Response: 6 hours, 7 minutes.

Estimated Total Annual Burden Hours: 15,300 hours.

Title: Application for Extension of Time to File Information Returns.

4. OMB Number: 1545–1081.

Regulatory Number: TD 9838.

Form Number: 8809.

Abstract: Form 8809 is used to request an extension of time to file Forms W–2, W–2G, 1042–S, 1094–C, 1095, 1097, 1098, 1099, 3921, 3922, 5498, or 8027. The IRS reviews the information contained on the form to determine whether an extension should be granted.

Current Actions: There is no change to the form. However, the filing estimates have been updated. This will result in a total estimated burden increase of 3,656,464 hours. We are making this submission to renew the OMB approval.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, farms, and Federal, State, local or Tribal governments.

Estimated Number of Respondents: 821,406.

Estimated Time per Respondent: 4 hrs., 44 min.

Estimated Total Annual Burden Hours: 3,893,465.

5. Title: Residence of Trusts and Estates—7701.

OMB Number: 1545–1600.

Regulation Project Number: TD 8813.

Abstract: This regulation provides the procedures and requirements for making the election to remain a domestic trust in accordance with section 1161 of the Taxpayer Relief Act of 1997. The information submitted by taxpayers will be used by the IRS to determine if a trust is a domestic trust or a foreign trust.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of the currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 222.

Estimated Time per Respondent: 31 minutes.

Estimated Total Annual Burden Hours: 114.

6. Title: Escrow Funds and Other Similar Funds.

OMB Number: 1545–1631.

Regulation Project Number: TD 9249.

Abstract: This document contains final regulations relating to the taxation and reporting of income earned on qualified settlement funds and certain other escrow accounts, trusts, and funds, and other related rules. The final regulations affect qualified settlement funds, escrow accounts established in connection with sales of property, disputed ownership funds, and the parties to these escrow accounts, trusts, and funds.

Current Actions: There are no changes to the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions and Federal, state, local or tribal governments.

Estimated Number of Respondents: 9,300.

Estimated Time per Respondent: 24 minutes.

Estimated Total Annual Burden Hours: 3,720.

7. Title: Constructive Transfers and Transfers of Property to a Third Party on Behalf of a Spouse.

OMB Number: 1545–1751.

Regulatory Number: TD 9035.

Abstract: Treasury Regulations section 1.1041–2 sets forth the required information that will permit spouses or former spouses to treat a redemption by a corporation of stock of one spouse or former spouse as a transfer of that stock to the other spouse or former spouse in exchange for the redemption proceeds and a redemption of the stock from the latter spouse or a former spouse in exchange for the redemption proceeds.

Current Actions: There is no change to the existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Responses: 1,000.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 500.

8. Title: Notice of Qualified Equity Investment for New Markets Credit.

OMB Number: 1545–2065.

Form Number: 8874–A.

Abstract: CDEs must provide notice to any taxpayer who acquires a qualified equity investment in the CDE at its original issue that the equity investment is a qualified equity investment entitling the taxpayer to claim the new markets credit. Form 8874–A is used to make the notification as required under section 1.45D–1(g)(2)(i)(A).

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individual or households, Business or other for-profit.

Estimated Number of Respondents: 500.

Estimated Time Per respondent: 5 hours and 26 minutes.

Estimated Total Annual Burden Hours: 2,715.

9. Title: Notice of Recapture Event for New Markets Credit.

OMB Number: 1545–2066.

Form Number: 8874–B.

Abstract: Community Development Entities (CDEs) must provide notification to any taxpayer holder of a qualified equity investment (including prior holders) that a recapture event has occurred. This form is used to make the notification as required under Regulations section 1.45D–1(g)(2)(i)(B).

Current Actions: There are no changes to burden.

Type of Review: Extension of a currently approved collection.

Affected Public: Individual or households, Business or other for-profit.

Estimated Number of Respondents: 500.

Estimated Time per Response: 5 hours, 30 minutes.

Estimated Total Annual Burden Hours: 2,755 hours.

10. Title: Credit for Carbon Dioxide Sequestration under Section 45Q.

OMB Number: 1545–2153.

Form Project Number: Notice 2009–83.

Abstract: The notice sets forth interim guidance, pending the issuance of regulations, relating to the credit for carbon dioxide sequestration (CO2 sequestration credit) under § 45Q of the Internal Revenue Code.

Current Actions: There is no change in the burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 30.

Estimated Time per Respondent: 6 hours.

Estimated Total Annual Burden Hours: 180.

11. Title: Relief for Certain Spouses of Military Personnel.

OMB Number: 1545–2169.

Document Number(s): TD 9194, 9391 and Notices: 2010–30, 2011–16, and 2012–41.

Abstract: The Military Spouses Residency Relief Act (''MSRRA'') was signed into law on November 11, 2009 (Pub. L. 111–97). MSRRA applies to the 2009 and subsequent tax years. This collection provides guidance to taxpayers who claim the benefits of the tax provisions under MSRRA for the 2009 and subsequent tax years. These documents provide civilian spouses working in a U.S. territory but claiming a tax residence in one of the 50 States or the District of Columbia (''U.S. mainland'') under MSRRA with an extension of time for paying the tax due the Internal Revenue Service (''IRS'') (Internal Revenue Code § 6161). Additionally, these documents provide civilian spouses working on the U.S. mainland but claiming a tax residence in a U.S. territory under MSRRA with guidance on filing claims for refund of federal income taxes that their employers withheld and remitted to the IRS or estimated tax payments the taxpayers paid to the IRS.

Current Actions: There is no change to the burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 6,200.

Estimated Time per Respondent: 1 hr.

Estimated Total Annual Burden Hours: 6,200.

Authority:44 U.S.C. 3501 et seq.

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2023–23901 Filed 10–27–23; 8:45 am]

BILLING CODE 4830–01–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Event

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public event.

SUMMARY: Notice is hereby given of the following open public event of the U.S.-China Economic and Security Review Commission. The Commission is mandated by Congress to investigate, assess, and report to Congress annually on ''the national security implications of the economic relationship between the United States and the People's Republic of China.'' Pursuant to this mandate, the Commission will hold a public release of its 2023 Annual Report to Congress in Washington, DC on November 14, 2023.

DATES: The release is scheduled for Tuesday, November 14, 2023 at 10:30 a.m.

ADDRESSES: This release will be held in-person at or near the U.S. Capitol and adjacent Congressional office buildings (specific building and room number to be announced) and online via live webcast on the Commission's website at *www.uscc.gov.* Please check the Commission's website for an announcement on the specific event location once determined. Instructions on how to view the webcast and submit questions or participate in the question and answer session will also be posted at *USCC.gov.* Reservations are not required to attend.

FOR FURTHER INFORMATION CONTACT: Any member of the public seeking further information concerning the event should contact Jameson Cunningham, 444 North Capitol Street NW, Suite 602, Washington, DC 20001; telephone: 202–

624–1496, or via email at *jcunningham@uscc.gov. Reservations are not required to attend.*

ADA Accessibility: For questions about the accessibility of the event or to request an accommodation, please contact Jameson Cunningham at 202–624–1496, or via email at *jcunningham@uscc.gov.* Requests for an accommodation should be made as soon as possible, and at least five business days prior to the event.

SUPPLEMENTARY INFORMATION:

Topics to Be Discussed: The Commission's 2023 Annual Report to Congress addresses key findings and recommendations for Congressional action based upon the Commission's hearings, research, and review of the areas designated by Congress in its mandate, including focused work this year on: a review of economics, trade, security, and foreign affairs developments in China and in the U.S.-China relationship in 2023; China's military diplomacy and overseas security activities; China's challenges and capabilities in educating and training a next generation workforce to sustain competition; China's global influence and interference activities; China's pursuit of defense technologies; China's subversion of international laws and norms; China-EU Relations; China's domestic economy; and changing relations with Taiwan and Hong Kong.

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Public Law 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7), as amended by Public Law 109–108 (November 22, 2005), as amended by Public Law 113–291 (December 19, 2014).

Dated: October 25, 2023.

Daniel W. Peck,

Executive Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2023–23866 Filed 10–27–23; 8:45 am]

BILLING CODE 1137–00–P

DEPARTMENT OF VETERANS AFFAIRS

Corporate Senior Executive Management Office; Notice of Performance Review Board Members

AGENCY: Corporate Senior Executive Management Office, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Agencies are required to publish a notice in the **Federal Register** of the appointment of Performance Review Board (PRB) members. This notice announces the appointment of individuals to serve on the PRB of the Department of Veterans Affairs.

DATES: This appointment is effective October 30, 2023.

ADDRESSES: Corporate Senior Executive Management Office, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Contact Carrie M. Johnson-Clark, Executive Director, Corporate Senior Executive Management Office (006D), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, 202–632–5181.

SUPPLEMENTARY INFORMATION: The membership of the Department of Veterans Affairs Performance Review Board is as follows:

Jackson, Kimberly M.—Chair
Law, Cassandra M.—Vice Chair
Arnold, Kenneth
Beard, Dewaine
Billups, Angela
Bocchicchio, Alfred
Boerstler, John
Boyd, Teresa
Brower, Marilyn
Brubaker, Paul
Choi, Joanne
Christy, Phillip
Crews, Paul
Dossie, Susie
Ellis, Anne
Eskenazi, Laura
Flint, Sandra
Gill, Airis
Goins, Gregory
Hall, Patricia
Hogan, Michael
Houston, Bradley
Jones, Wendell
Lambert, Jonathan
Lee, Aaron
Liezert, Timothy
Llorente, Maria
London, Jeffrey
Marsh, Willie C.
McCune, Daniel
McDivitt, Robert
McInerney, Joan
Murphy, Beth
Nassar, Joseph
Perry, David
Pope, Derwin B.
Pozzebon, Lisa
Rawls, Cheryl
Ruzick, Laura
Sullivan, Matthew
Tapp, Charles
Terrell, Brandye
Zomchek, Daniel

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on October 24, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

(Authority: 5 U.S.C. 4314(c)(4))

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2023–23815 Filed 10–27–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA), Veterans Health Administration (VHA).

ACTION: Rescindment of a system of records.

SUMMARY: VA is rescinding an outdated system of records titled, ''Community Placement Program-VA'' (65VA122) as set forth in the **Federal Register**. This system was used to provide administrative documentation of State and/or local active licensed VA Community Placement Program agencies.

DATES: The system was discontinued on December 1, 2008. Comments on this rescinded system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by the VA, the rescindment will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005X6F), Washington, DC 20420. Comments should indicate that they are submitted in response to ''Community Placement Program-VA'' (65VA122). Comments received will be available at regulations.gov for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Stephania Griffin, VHA Chief Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue NW, (105HIG) Washington, DC 20420; telephone (704) 245–2492 (Note: this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Categories of individuals covered by the system were individuals who operated a Community Placement facility (Community Nursing Home) approved for placement of VA beneficiaries, and VA beneficiaries in Community Placement facilities. Records were maintained on magnetic tapes which are stored at the Austin Information Technology Center, and paper documents (printouts) were maintained at VA Central Office and the health care facilities.

This system of records notice is being rescinded as a result of the Community Residential Care being merged with the Medical Foster Homes. This information is now located within the system of records titled, ''Community Residential Care and Medical Foster Home Programs–VA'' (142VA10). The records associated with the Community Placement Program were destroyed in accordance with VHA Records Control Schedule 10–1, item number 6110.4.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Kurt D. DelBene, Assistant Secretary for Information and Technology and Chief Information Officer, approved this document on October 24, 2023 for publication.

Dated: October 25, 2023.

Amy L. Rose,

Government Information Specialist, VA Privacy Service, Office of Compliance, Risk and Remediation, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME:

''Community Placement Program-VA'' (65VA122).

HISTORY:

74 FR 33024 (July 9, 2009).

[FR Doc. 2023–23878 Filed 10–27–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0883]

Agency Information Collection Activity Under OMB Review: Per Diem to States for Care of Eligible Veterans in State Homes

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0883.''

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Avenue NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0883'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–3521.

Title: Per Diem to States for Care of Eligible Veterans in State Homes (VA Forms 10–0143, 10–0143A, 10–0144, 10–0144A, 10–0460a, and 10–3567).

OMB Control Number: 2900–0883.

Type of Review: Revision of a currently approved collection.

Abstract: Authority for this information collection is from title 38 Code of Federal Regulations (CFR) part 51, Per Diem for Nursing Home, Domiciliary or Adult Day Health Care of Veterans in State Veterans Homes, requiring the VA to ensure that per diem payments are limited to facilities providing high quality care for Veterans. This collection of forms is approved under OMB Control Number 2900–0883.

These six forms (10–0143, 10–0143A, 10–0144, 10–0144A, 10–0460a, and 10–3567) are presented to and completed by State Veterans Homes (SVH) management under subpart B of the CFR part 51 and then assessed for compliance to applicable regulations under subparts D, E or F by VA contracted vendors during a VA survey at each State Veterans Home (SVH) across the U.S. as a regulatory action. This collection of forms falls under the auspices of The Office of Geriatrics and Extended Care in VA Central Office (12GEC). As per VHA Directive 1145.01, this collection of forms is part of the VA survey process. The legal requirements that necessitate this collection of information are found specifically at title 38 CFR 51.31, 51.43 and 51.210 for all three levels of care: nursing home, domiciliary, and adult day health care.

The information required at time of the VA survey includes the application and justification for medications for a basic rate Veteran; records and reports that SVH management must maintain regarding activities of residents or participants; information relating to whether the SVH meets standards concerning residents' rights and responsibilities prior to admission or enrollment, during admission or enrollment, and upon discharge; the records and reports which SVH management and SVH health care professionals must maintain regarding residents or participants and employees; various types of documents pertaining to the management of the SVH; pharmaceutical records; and staffing documentation.

a. VA Form 10–0143—38 CFR 51.210(c)(9)—is used for the annual certification pursuant to the Drug-Free Workplace Act of 1988.

b. VA Form 10–0143A—38 CFR 51.210(c)(8)—is used for annual certification from the responsible State Agency showing compliance with section 504 of the Rehabilitation Act of 1973 (Public Law 93–112).

c. VA Form 10–0144—38 CFR 51.210(c)(10)—is used for annual certification regarding lobbying, in compliance with Public Law 101–121.

d. VA Form 10–0144A—38 CFR 51.210(c)(11)—is used for annual certification of compliance with title VI of the Civil Rights Act of 1964, as incorporated in title 38 CFR 18.1–18.3.

e. VA Form 10–0460a—38 CFR 51.43—As a condition for receiving drugs or medicine under this section or under § 17.96 of this chapter, the State Home will submit to the VA medical center of jurisdiction a monthly completed VA Form 10–0460a with the corresponding prescription(s) for each eligible Veteran.

f. VA Form 10–3567—38 CFR 51.31—is completed by SVH management during the annual VA survey and used to record and then assess the following: operating beds versus recognized beds, total FTEE authorized and vacancies, as well as resident census.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period

soliciting comments on this collection of information was published at 88 FR 164 on August 25, 2023, pages 58439 and 58440.

Total Annual Burden: 2,119 hours.

Total Annual Responses: 2,805.

VA Form 10–0143

Affected Public: State, local, and Tribal governments.

Estimated Annual Burden: 13.75 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 165.

VA Form 10–0143A

Affected Public: State, local, and Tribal governments.

Estimated Annual Burden: 13.75 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 165.

VA Form 10–0144

Affected Public: State, local, and Tribal governments.

Estimated Annual Burden: 13.75 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 165.

VA Form 10–0144A

Affected Public: State, local, and Tribal governments.

Estimated Annual Burden: 13.75 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 165.

VA Form 10–0460a

Affected Public: State, local, and Tribal governments.

Estimated Annual Burden: 1980 hours.

Estimated Average Burden per Respondent: 60 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 165.

VA Form 10–3567

Affected Public: State, local, and Tribal governments.

Estimated Annual Burden: 82.50 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 165.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–23873 Filed 10–27–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease (EUL) of Department of Veterans Affairs (VA) Real Property for the Development of Permanent Supportive Housing at the Doris Miller VA Medical Center (VAMC), Waco, Texas Campus

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent to enter into an EUL.

SUMMARY: The purpose of this **Federal Register** notice is to provide the public with notice that the Secretary of Veterans Affairs intends to enter into an EUL of Buildings 19, 20 and 21 on approximately 3.4 acres of underutilized land on the campus of the Doris Miller VAMC.

FOR FURTHER INFORMATION CONTACT: C. Brett Simms, Executive Director, Office of Asset Enterprise Management, Office of Management, 810 Vermont Avenue NW, Washington, DC 20420, 202–632–7092. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Pursuant to 38 U.S.C. 8161, *et seq.* as amended by Public Law 117–168, the Secretary of Veterans Affairs is authorized to enter into an EUL, for a term of up to 99 years, that (a) provides supportive housing for Veterans and their families, or (b) enhances the use of the leased property by directly or indirectly benefitting Veterans. Additionally, the EUL must not be inconsistent with and not adversely affect VA's mission or the operation of VA's facilities, programs and services in the area of the leased property. Consistent with this authority, the Secretary intends to enter into an EUL for the purpose of outleasing Buildings 19, 20 and 21 on approximately 3.4 acres of underutilized land on the campus of the Doris Miller VAMC, to develop approximately 34 units of permanent supportive housing for Veterans and their families. The competitively selected EUL lessee/developer, Wellington Waco USA, LP, will finance, design, develop, renovate, construct, manage, maintain and operate housing for eligible homeless Veterans or Veterans at risk of homelessness on a priority placement basis. Additionally, the lessee/developer will be required to provide supportive services that guide Veteran residents towards long-term independence and self-sufficiency.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on October 19, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2023–23818 Filed 10–27–23; 8:45 am]

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Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 40

Reliability Standards To Address Inverter-Based Resources; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM22–12–000; Order No. 901]

Reliability Standards To Address Inverter-Based Resources

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final action.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is directing the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization, to develop new or modified Reliability Standards that address reliability gaps related to inverter-based resources in the following areas: data sharing; model validation; planning and operational studies; and performance requirements. The Commission is also directing NERC to submit to the Commission an informational filing within 90 days of the issuance of this final action that includes a detailed, comprehensive standards development plan providing that all new or modified Reliability Standards necessary to address the inverter-based resource-related reliability gaps identified in this final action be submitted to the Commission by November 4, 2026.

DATES: This rule is effective December 29, 2023.

FOR FURTHER INFORMATION CONTACT:

Eugene Blick (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8803, *Eugene.Blick@ferc.gov*.

Felicia West (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8948, *Felicia.West@ferc.gov*.

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I. Introduction

1. Pursuant to section 215(d)(5) of the Federal Power Act (FPA),[1] the Federal Energy Regulatory Commission (Commission) directs the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO), to submit new or modified Reliability Standards [2] that address specific matters pertaining to the impacts of inverter-based resources (IBR) [3] on the reliable operation [4] of the Bulk-Power System.[5] As proposed in the notice of proposed rulemaking (NOPR), we direct NERC to develop new or modified Reliability Standards addressing reliability gaps pertaining to IBRs in four areas: (1) data sharing; (2) model validation; (3) planning and operational studies; and (4) performance requirements.[6] NERC may propose to develop new or modified Reliability Standards that address our concerns in an equally efficient and effective manner; however, NERC's proposal should explain how the new or modified Reliability Standards address the Commission's concerns discussed in this final action.[7]

2. We take this action in light of the rapid change in the mix of generation resources [8] connecting to the Bulk-Power System, including the addition of an ''unprecedented proportion of nonsynchronous resources'' [9] projected to connect over the next decade, including many generation resources that employ inverters, rectifiers, and converters [10] to provide energy to the Bulk-Power System. According to NERC, the rapid integration of IBRs is ''the most significant driver of grid transformation'' on the Bulk-Power System.[11]

3. The Reliability Standards, first approved by the Commission in 2007, were developed to apply to the types of generation resources prevalent at that time—nearly exclusively synchronous generation resources—to ensure the reliable operation of the Bulk-Power System. As a result, the Reliability Standards may not account for the material technological differences between the response of synchronous generation resources and the response of IBRs to the same disturbances on the Bulk-Power System.[12]

4. We also take this action because, as discussed in more detail in section III below, we find that the currently effective Reliability Standards do not ensure that Bulk-Power System planners and operators [13] have the necessary tools to plan for and reliably integrate IBRs into the Bulk-Power System or to plan for IBRs connected to the distribution system that in the aggregate have a material impact on the Bulk-Power System (IBR–DER). IBRs, individually and in the aggregate, and IBR–DERs in the aggregate can have a material impact on the reliable operation of the Bulk-Power System.[14] Additionally, the Reliability Standards do not contain performance requirements that are unique to IBRs and are necessary to ensure that IBRs operate in a predictable and reliable manner.

5. As discussed in greater detail below, we therefore direct NERC, pursuant to section 215(d)(5) of the FPA and § 39.5(f) of the Commission's regulations, to develop new or modified Reliability Standards that address the following specific issues:

- *IBR Data Sharing:* The Reliability Standards must require that generator owners, transmission owners, and

[1] 16 U.S.C. 824o(d)(5) (the Commission may order the Electric Reliability Organization (ERO) to submit to the Commission a proposed Reliability Standard or a modification to a Reliability Standard that addresses a specific matter if the Commission considers such a new or modified Reliability Standard appropriate to carry out FPA section 215).

[2] The FPA defines Reliability Standard as requirements for the operation of existing Bulk-Power System facilities, including cybersecurity protection, and the design of planned additions or modifications to such facilities to the extent necessary to provide for reliable operation of the Bulk-Power System, but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity. *Id.* 824o(a)(3); *see also* 18 CFR 39.1.

[3] This final action uses the term IBR generally to include all generation resources that connect to the electric power system using power electronic devices that change direct current (DC) power produced by a resource to alternating current (AC) power compatible with distribution and transmission grids. IBRs may refer to solar photovoltaic (PV), wind, fuel cell, and battery storage resources.

[4] The FPA defines reliable operation as operating the elements of the Bulk-Power System within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance, including a cybersecurity incident, or unanticipated failure of system elements. 16 U.S.C. 824o(a)(4); *see also* 18 CFR 39.1.

[5] The Bulk-Power System is defined in the FPA as facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof), and electric energy from generating facilities needed to maintain transmission system reliability. The term does not include facilities used in the local distribution of electric energy. 16 U.S.C. 824o(a)(1); *see also* 18 CFR 39.1.

[6] *Reliability Standards to Address Inverter-based Res.,* Notice of Proposed Rulemaking, 87 FR 74541 (Dec. 6, 2022), 181 FERC ¶ 61,125, at P 1 (2022) (NOPR).

[7] *See, e.g., Mandatory Reliability Standards for the Bulk-Power Sys.,* Order No. 693, 72 FR 16416 (Apr. 4, 2007), 118 FERC ¶ 61,218, at PP 186, 297, *order on reh'g,* Order No. 693–A, 72 FR 40717 (July 25, 2007), 120 FERC ¶ 61,053 (2007) (''[W]here the Final Rule identifies a concern and offers a specific approach to address the concern, we will consider an equivalent alternative approach provided that the ERO demonstrates that the alternative will address the Commission's underlying concern or goal as efficiently and effectively as the Commission's proposal.'').

[8] The Reliability Standards use both terms ''generation resources'' and ''generation facilities'' to define sources of electric power on the transmission system. This final action uses the term ''generation resources.''

[9] NERC, *2020 Long Term Reliability Assessment Report,* 9 (Dec. 2020), *https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_LTRA_2020.pdf* (2020 LTRA Report).

[10] An inverter is a power electronic device that inverts DC power to AC sinusoidal power. A rectifier is a power electronic device that rectifies AC sinusoidal power to DC power. A converter is a power electronic device that performs rectification and/or inversion. Consistent with NERC's terminology, this order uses the term ''inverter'' to refer to generating facilities that use power electronic inversion, rectification, and conversion. NERC, *Inverter-Based Resource Performance and Analysis Technical Workshop,* 29 (Feb. 2019), *https://www.nerc.com/comm/PC/IRPTF%20Workshops/IRPTF_Workshop_Presentations.pdf.*

[11] NERC, *Inverter-Based Resource Strategy: Ensuring Reliability of the Bulk Power System with Increased Levels of BPS-Connected IBRs,* 1 (June 2022), *https://www.nerc.com/comm/Documents/NERC_IBR_Strategy.pdf* (NERC IBR Strategy).

[12] *See, e.g.,* NERC, *2013 Long-Term Reliability Assessment,* 22 (Dec. 2013), *https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/2013_LTRA_FINAL.pdf* (2013 LTRA Report) (finding that reliably integrating high levels of variable resources into the Bulk-Power System would require ''significant changes to traditional methods used for system planning and operation,'' including requiring ''new tools and practices, including potential enhancements to . . . Reliability Standards or guidelines to maintain [Bulk-Power System] reliability.'').

[13] Bulk-Power System planners and operators include planning coordinators, transmission planners, reliability coordinators, transmission operators, and balancing authorities, and any other functional entity NERC may identify as applicable to meet the directives in this final action.

[14] NERC reports do not always differentiate between IBRs based on type, or between those subject to Reliability Standards and those located on the distribution system. Where necessary to describe our directives, however, we differentiate between IBRs registered with NERC (or which will be registered pursuant to the Commission's directives in *Registration of Inverter-based Resources,* 181 FERC ¶ 61,124 (2022) (IBR Registration Order)) and therefore subject to the Reliability Standards (*i.e.,* registered IBR), IBRs connected directly to the Bulk-Power System but not registered with NERC and therefore not subject to the Reliability Standards (*i.e.,* unregistered IBRs), and IBRs connected to the distribution system that in the aggregate have a material impact on the Bulk-Power System (*i.e.,* IBR–DER). Although the remaining subset of unregistered IBRs and IBR–DERs in the aggregate will not be subject to the mandatory and enforceable Reliability Standards set forth herein, they may be subject to provision of data and information to their respective transmission owners and distribution providers, as applicable, in accordance with their specific interconnection agreements. We encourage NERC to continue its efforts to review and evaluate whether reliability gaps continue to remain and if new or modified functional registration categories or Reliability Standards are necessary. *See infra* note 365 (discussing NERC's estimate of the percentage of IBRs to be registered under its registration work plan).

distribution providers share validated modeling, planning, operations, and disturbance monitoring data for all IBRs with planning coordinators, transmission planners, reliability coordinators, transmission operators, and balancing authorities so that the latter group has the necessary data to predict the behavior of registered and unregistered IBRs individually and in the aggregate, as well as IBR–DERs in the aggregate, and their impact on the reliable operation of the Bulk-Power System.

- *IBR Model Validation:* The Reliability Standards must require that all IBR models are comprehensive, validated, and updated in a timely manner, so that planning coordinators, transmission planners, reliability coordinators, transmission operators, and balancing authorities can adequately predict the behavior of registered and unregistered IBRs individually and in the aggregate, as well as IBR–DERs in the aggregate, and their impacts on the reliable operation of the Bulk-Power System.
- *IBR Planning and Operational Studies:* The Reliability Standards must require that planning and operational studies include validated IBR models to assess the reliability impacts of registered and unregistered IBRs individually and in the aggregate, as well as IBR–DERs in the aggregate, on the reliable operation of the Bulk-Power System. The Reliability Standards must require that planning and operational studies assess the impacts of all IBRs within and across planning and operational boundaries for normal operations and contingency event conditions.
- *IBR Performance Requirements:* The Reliability Standards must ensure that registered IBRs will provide frequency and voltage support during frequency and voltage excursions in a manner necessary to contribute toward the overall system needs for essential reliability services.[15] The Reliability Standards must establish clear and reliable technical limits and capabilities for registered IBRs to ensure that all registered IBRs are operated in a predictable and reliable manner during normal operations and contingency event conditions. The Reliability Standards must require that the operational aspects of registered IBRs contribute towards meeting the overall system needs for essential reliability services. The Reliability Standards must include post-disturbance ramp rates and phase lock loop synchronization requirements for registered IBRs.

6. Pursuant to § 39.2(d) of the Commission's regulations,[16] we direct NERC to submit an informational filing within 90 days of the issuance of the final action in this proceeding. NERC's filing shall include a detailed and comprehensive standards development plan explaining how NERC will prioritize the development of new or modified Reliability Standards to meet the deadlines set forth in this final action. We direct NERC to explain in its filing how it is prioritizing its IBR Reliability Standard projects to meet the directives in this final action, taking into account the risk posed to the reliability of the Bulk-Power System, standard development projects already underway, resource constraints, and other factors if necessary.

7. NERC's standards development plan must ensure that NERC submits new or modified Reliability Standards by the following deadlines. First, by November 4, 2024, NERC must submit new or modified Reliability Standards that establish IBR performance requirements, including requirements addressing frequency and voltage ride through,[17] post-disturbance ramp rates, phase lock loop synchronization, and other known causes of IBR tripping or momentary cessation.[18] NERC must also submit, by November 4, 2024, new or modified Reliability Standards that require disturbance monitoring data sharing and post-event performance validation for registered IBRs. Second, by November 4, 2025, NERC must submit new or modified Reliability Standards addressing the interrelated directives concerning: (1) data sharing for registered IBRs, unregistered IBRs, and IBR–DERs in the aggregate; and (2) data and model validation for registered IBRs, unregistered IBRs, and IBR–DERs in the aggregate. Finally, by November 4, 2026, NERC must submit new or modified Reliability Standards addressing planning and operational studies for registered IBRs, unregistered IBRs, and IBR–DERs in the aggregate. We continue to believe this staggered approach to standard development and implementation is necessary based on the scope of work anticipated and that specific target dates will provide a valuable tool and incentive to NERC to timely address the directives in this final action.

8. Although we are not directing NERC to include implementation dates in its informational filing and are leaving determination of the appropriate effective dates to the standards development process, we are concerned that the lack of a time limit for implementation could allow identified issues to remain unresolved for a significant and indefinite period. Therefore, we emphasize that industry has been aware of and alerted to the need to address the impacts of IBRs on the Bulk-Power System since at least 2016. The number of events, NERC Alerts, reports, whitepapers, guidelines, and ongoing standards projects, as discussed in more detail in section III and throughout this final action, more than demonstrate the need for the expeditious implementation of new or modified Reliability Standards addressing IBR data sharing, data and model validation, planning and operational studies, and performance requirements. Thus, in that light, the Commission will take these issues into account when it considers the proposed implementation plan for each new or modified Reliability Standard when it is submitted for Commission. Further, as a general matter, we believe that there is a need to have all the directed Reliability Standards effective and enforceable well in advance of 2030 and direct NERC to ensure that the associated implementation plans sequentially stagger the effective and enforceable dates to ensure an orderly industry transition for complying with the IBR directives in this final action prior to 2030.

II. Background

A. Section 215 of the FPA and the Mandatory Reliability Standards

9. Section 215 of the FPA provides that the Commission may certify an

[15] *See, e.g.,* NERC, *A Concept Paper on Essential Reliability Services that Characterizes Bulk Power System Reliability,* vi (Oct. 2014), *https://www.nerc.com/comm/Other/essntlrlbltysrvcstskfrcDL/ERSTF%20Concept%20Paper.pdf* (Essential Reliability Services Concept Paper) (listing the essential reliability services necessary to maintain Bulk-Power System reliability).

[16] 18 CFR 39.2(d) (the electric reliability organization shall provide the Commission information as necessary to implement section 215 of the FPA).

[17] *See Standardization of Generator Interconnection Agreements & Procs.,* Order No. 2003, 104 FERC ¶ 61,103, at P 562 n.88 (2003) (defining ride through as ''a Generating Facility staying connected to and synchronized with the Transmission System during system disturbances within a range of over- and under-frequency[/voltage] conditions, in accordance with Good Utility Practice.'').

[18] Momentary cessation is a mode of operation during which the inverter remains electrically connected to the Bulk-Power System, but the inverter does not inject current during low or high voltage conditions outside the continuous operating range. As a result, there is no current injection from the inverter and therefore no active or reactive current (and no active or reactive power). NERC, *Reliability Guideline: BPS-Connected Inverter-Based Resource Performance,* 11 (Sept. 2018), *https://www.nerc.com/comm/RSTC_Reliability_Guidelines/Inverter-Based_Resource_Performance_Guideline.pdf* (IBR Performance Guideline).

ERO, the purpose of which is to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval.[19] Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[20] Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO,[21] and subsequently certified NERC.[22]

10. Pursuant to section 215(d)(5) of the FPA, the Commission has the authority, upon its own motion or upon complaint, to order the ERO to submit to the Commission a proposed Reliability Standard or a modification to a Reliability Standard that addresses a specific matter if the Commission considers such a new or modified Reliability Standard appropriate to carry out section 215 of the FPA.[23] Further, pursuant to § 39.5(g) of the Commission's regulations, the Commission may order a deadline by which the ERO must submit a proposed or modified Reliability Standard.[24]

B. Inverter-Based Resources

11. The Bulk-Power System generation fleet has traditionally been composed almost exclusively of synchronous generation resources that convert mechanical energy into electric energy through electromagnetic induction. By virtue of the kinetic energy in their large rotating components, these synchronous generation resources inherently resist changes in system frequency, providing time for other governor controls (when properly configured) to maintain supply and load balance. Similarly, synchronous generation resources inherently provide voltage support during voltage disturbances.

12. In contrast, IBRs do not use electromagnetic induction from machinery that is directly synchronized to the Bulk-Power System. Instead, the majority of installed IBRs use grid-following inverters, which rely on sensed information from the grid (*e.g.,* a voltage waveform) to produce the desired AC real and reactive power output.[25] Due to their inverters, IBRs can track grid state parameters (*e.g.,* voltage angle) in milliseconds and react nearly instantaneously to changing grid conditions. Some IBRs, however, are not configured or programmed to support grid voltage and frequency in the event of a system disturbance, and, as a result, will reduce power output,[26] exhibit momentary cessation, or trip in response to variations in system voltage or frequency.[27] In other words, under certain conditions some IBRs cease to provide power to the Bulk-Power System due to how they are configured and programmed. Nonetheless, some models and simulations incorrectly predict that some IBRs will ride through disturbances, *i.e.,* maintain real power output at pre-disturbance levels and provide voltage and frequency support consistent with Reliability Standard PRC–024–3 (Frequency and Voltage Protection Settings for Generating Resources).[28]

13. IBRs across the Bulk-Power System exhibit common mode failures that are amplified when IBRs act in the aggregate.[29] Thus, both localized and interconnection-wide IBR issues must be identified, studied, and mitigated to preserve Bulk-Power System reliability.[30] Although IBRs are typically smaller-megawatt (MW) facilities, they are at greater risk than synchronous generation resources of ceasing to provide power to the Bulk-Power System in response to a single fault on the transmission or sub-transmission systems. Specifically, such response can occur when individual IBR controls and equipment protection settings are not configured to ride through system disturbances.[31] IBRs that enter momentary cessation may act in aggregate and cause a reduction in power output far in excess of any individual IBR's impact on the Bulk-Power System. The potential impact of IBRs is not restricted by the size of a single facility or an individual balancing authority area, but by the number of IBRs or percent of generation made up by IBRs within a region. In areas of high IBR penetration, this type of aggregate response may have an impact much greater than the most severe single contingency (*i.e.,* the traditional worst-case N–1 contingency) [32] of a balancing authority area, potentially adversely affecting other balancing authority areas within an interconnection.[33] Unless

[19] 16 U.S.C. 824o(c).

[20] *Id.* 824o(e).

[21] *Rules Concerning Certification of the Elec. Reliability Org. & Procs. for the Establishment, Approval, & Enf't. of Elec. Reliability Standards,* Order No. 672, 114 FERC ¶ 61,104, *order on reh'g,* Order No. 672–A, 114 FERC ¶ 61,328 (2006).

[22] *N. Am. Elec. Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[23] 16 U.S.C. 824o(d)(5).

[24] 18 CFR 39.5(g).

[25] *See, e.g.,* NERC, *2021 Long Term Reliability Assessment Report,* 6 (Dec. 2021), *https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_LTRA_2021.pdf* (2021 LTRA Report) (''IBRs respond to disturbances and dynamic conditions based on programmed logic and inverter controls, not mechanical characteristics.''); *see also generally,* Denholm et al., National Renewable Energy Laboratory, *Inertia and the Power Grid: A Guide Without the Spin,* NREL/TP–6120–73856, v (May 2020), *https://www.nrel.gov/docs/fy20osti/73856.pdf.*

[26] NERC and WECC, *San Fernando Disturbance,* 2 (Nov. 2020), *https://www.nerc.com/pa/rrm/ea/Documents/San_Fernando_Disturbance_Report.pdf* (San Fernando Disturbance Report) (covering the San Fernando event (July 7, 2020)).

[27] *See Essential Reliability Servs. & the Evolving Bulk-Power Sys. Primary Frequency Response,* Order No. 842, 162 FERC ¶ 61,128, at P 19 (2018) (describing NERC's comment that increased IBR deployment alongside retirement of synchronous generation resources has contributed to the decline in primary frequency response); *see also* NERC, *Fast Frequency Response Concepts and Bulk Power System Reliability Needs,* 5 (Mar. 2020), *https://www.nerc.com/comm/PC/InverterBased%20Resource%20Performance%20Task%20Force%20IRPT/Fast_Frequency_Response_Concepts_and_BPS_Reliability_Needs_White_Paper.pdf* (Fast Frequency Response White Paper) (explaining that as the instantaneous penetration of IBRs with little or no inertia continues to increase, system rate of change of frequency after a loss of generation will increase and the time available to deliver frequency responsive reserves will shorten, and illustrating the steeper rate of change of frequency and the importance of speed of response).

[28] The NOPR referred to Reliability Standard PRC–024–2; however, Reliability Standard PRC–024–3 became mandatory and enforceable on October 1, 2022. Reliability Standards applicable in the United States, both effective and retired, are available at *https://www.nerc.com/pa/Stand/Pages/USRelStand.aspx.*

[29] NERC, *An Introduction to Inverter-Based Resources on the Bulk-Power System,* 6 (June 2023), *https://www.nerc.com/pa/Documents/2023_NERC_Guide_Inverter-Based-Resources.pdf* (explaining that ''NERC continues to analyze large-scale grid disturbances involving common mode failures in inverter-based resources that, if not addressed, could lead to catastrophic events in the future'').

[30] *See* NOPR, 181 FERC ¶ 61,125 at P 4.

[31] *See, e.g.,* NERC and WECC, *900 MW Fault Induced Solar Photovoltaic Resource Interruption Disturbance Report,* 19 (Feb. 2018), *https://www.nerc.com/pa/rrm/ea/October%209%202017%20Canyon%202%20Fire%20Disturbance%20Report/900%20MW%20Solar%20Photovoltaic%20Resource%20Interruption%20Disturbance%20Report.pdf* (Canyon 2 Fire Event Report) (covering the Canyon 2 Fire event (October 9, 2017)) (finding momentary cessation as a major cause for the loss of IBRs when voltages rose above 1.1 per unit or decreased below 0.9 per unit).

[32] The most severe single contingency, or the N–1 contingency, generally refers to the concept that a system must be able to withstand an unexpected failure or outage of a single system component and maintain reliable service at all times. *See, e.g.,* NERC, *Glossary of Terms Used in NERC Reliability Standards,* 17 (Mar. 8, 2023), *https://www.nerc.com/pa/Stand/Glossary%20of%20Terms/Glossary_of_Terms.pdf* (NERC Glossary) (defining ''most severe single contingency'').

[33] *See, e.g.,* San Fernando Disturbance Report at vi (stating that ''[t]his event, as with past events, involved a significant number of solar PV resources reducing power output (either due to momentary cessation or inverter tripping) as a result of normally-cleared [Bulk-Power System] faults. The widespread nature of power reduction across many

Continued

IBRs are configured and programmed to ride through normally cleared transmission faults, the potential impact of losing IBRs individually or in the aggregate will continue to increase as IBRs are added to the Bulk-Power System and make up an increasing proportion of the resource mix.

14. Simulations conducted by the NERC Resource Subcommittee demonstrate that the risks to Bulk-Power System reliability posed by momentary cessation are greater than any of the actual IBR disturbances that NERC has documented since 2016.[34] These simulations indicate the potential for: (1) normally-cleared, three-phase faults at certain locations in the Western Interconnection to result in upwards of 9,000 MW of solar PV IBRs entering momentary cessation across a large geographic region; (2) transient instability caused by excessive transfer of inter-area power flows during and after momentary cessation; and (3) a drop in frequency that falls below the first stage of under frequency load shedding in the Western Electricity Coordinating Council (WECC) region (traditionally studied as the loss of the two Palo Verde nuclear units in Arizona, which total approximately 2,600 MW). These simulation results indicate that IBR momentary cessation occurring in the aggregate can lead to instability, system-wide uncontrolled separation, and voltage collapse.[35]

15. Although IBRs present risks that Bulk-Power System planners and operators must account for, IBRs also present new opportunities to support the grid and respond to abnormal grid conditions.[36] When appropriately programmed, IBRs can operate during greater frequency deviations (*i.e.,* a wider frequency range) than synchronous generation resources.[37] This operational flexibility—and the ability of IBRs to perform with precision, speed, and control—could mitigate disturbances on the Bulk-Power System. For Bulk-Power System operators to harness the unique performance and control capabilities of IBRs, these resources must be properly configured and programmed to support grid voltage and frequency during normal and abnormal grid conditions and must be accurately modeled and represented in transmission planning and operations models.

C. Notice of Proposed Rulemaking

16. On November 17, 2022, the Commission issued the NOPR in this proceeding, proposing to direct NERC to submit new or modified Reliability Standards addressing four gaps in the currently effective Reliability Standards pertaining to IBRs: (1) data sharing; (2) model validation; (3) planning and operational studies; and (4) performance requirements.[38] The Commission initiated this action in light of the rapid change in the generation resource mix currently underway on the Bulk-Power System and the projected addition of unprecedented numbers of IBRs to the Bulk-Power System.[39] The Commission noted that IBRs provide many benefits, but that IBRs also present new considerations for transmission planning and operation of the Bulk-Power System.[40]

17. The Commission proposed to direct NERC to address the four reliability gaps by developing one or more new Reliability Standards or modifying the currently effective Reliability Standards. The Commission did not propose specific requirements; instead, the Commission identified concerns that the Reliability Standards should address. The Commission sought comments on its identified concerns and whether there were other concerns related to planning for and integrating IBRs that the Commission should direct NERC to address in this or a future proceeding.[41]

18. First, the Commission proposed to direct NERC to develop new or modified Reliability Standards addressing IBR data sharing. The Commission proposed that the new or modified Reliability Standards should ensure that NERC registered entities[42] have the necessary data to predict the behavior of all IBRs, including registered and unregistered IBRs individually and in the aggregate, and IBR–DERs in the aggregate, and their impact on the reliable operation of the Bulk-Power System. The Commission stated that the new or modified Reliability Standards should ensure that generator owners, transmission owners, and distribution providers are required to share validated modeling, planning, operations, and disturbance monitoring data for registered and unregistered IBRs and IBR–DERs in the aggregate with planning coordinators, transmission planners, reliability coordinators, transmission operators, and balancing authorities.[43]

19. Second, the Commission proposed to direct NERC to develop new or modified Reliability Standards addressing IBR model validation. The Commission proposed that the new or modified Reliability Standards should ensure that IBR models are comprehensive, validated, and updated in a timely manner, so that they can adequately predict the behavior of registered and unregistered IBRs individually and in the aggregate, and IBR–DERs in the aggregate, and their impacts on the reliable operation of the Bulk-Power System.[44]

20. Third, the Commission proposed to direct NERC to develop new or modified Reliability Standards addressing IBR planning and operational studies. The Commission proposed to direct that the new or modified Reliability Standards ensure that validated IBR models are included in transmission planning and operational studies to assess the reliability impacts on Bulk-Power System performance by registered and unregistered IBRs individually and in the aggregate, as well as IBR–DERs in the aggregate. The Commission stated that the Reliability Standards should ensure that planning and operational studies assess the impacts of registered and unregistered IBRs individually and in the aggregate, and IBR–DERs in the aggregate, within and across planning and operational boundaries for normal operations and contingency event conditions.[45]

21. Fourth, the Commission proposed to direct NERC to develop new or modified Reliability Standards addressing IBR performance requirements.[46] The Commission explained that the new or modified Reliability Standards should require that registered IBRs provide frequency and voltage support during frequency and voltage excursions, including post-disturbance ramp rates and phase lock

facilities poses risks to [Bulk-Power System] performance and reliability.'').

[34] *See* NERC, *Resource Loss Protection Criteria Assessment,* (Feb. 2018), *https://www.nerc.com/comm/PC/InverterBased%20Resource%20Performance%20Task%20Force%20IRPT/IRPTF_RLPC_Assessment.pdf.*

[35] *Id.* at 1–2, key findings 4, 7, 8.

[36] *See, e.g.,* IBR Performance Guideline at vii (finding that the power electronics aspects of IBRs ''present new opportunities in terms of grid control and response to abnormal grid conditions.'').

[37] *See, e.g.,* Fast Frequency Response White Paper at 11.

[38] NOPR, 181 FERC ¶ 61,125 at P 1.

[39] *Id.* P 2 (citing 2020 LTRA Report).

[40] *Id.*

[41] *Id.* P 6.

[42] NERC identifies and registers Bulk-Power System users, owners, and operators who are responsible for performing specified reliability functions to which requirements of mandatory Reliability Standards are applicable. *See* NERC, *Rules of Procedure,* Section 500 (Organization Registration and Certification) (Aug. 25, 2022), *https://www.nerc.com/AboutNERC/RulesOfProcedure/NERC%20ROP%20effective%2020220825_with%20appendicies.pdf.*

[43] NOPR, 181 FERC ¶ 61,125 at P 5.

[44] *Id.*

[45] *Id.*

[46] *Id.*

loop synchronization, in a manner necessary to contribute toward meeting the overall system needs for essential reliability services.[47] Further, the Commission stated that the new or modified Reliability Standards should establish clear and reliable technical limits and capabilities for registered IBRs to ensure that all registered IBRs are operated in a predictable and reliable manner during both normal operations and contingency event conditions.

22. Finally, the Commission proposed to direct NERC to submit a compliance filing within 90 days of the effective date of the final action in this proceeding. The Commission proposed to direct NERC to include in its compliance filing a detailed, comprehensive standards development and implementation plan explaining how NERC will prioritize the development and implementation of new or modified Reliability Standards. The Commission stated that NERC should explain how it would prioritize its IBR Reliability Standard projects to meet the directives in the final action, taking into account the risk posed to the reliability of the Bulk-Power System, standard development projects already underway, resource constraints, and other factors if necessary.[48]

23. The comment period for the NOPR ended on February 6, 2023, with reply comments due on March 6, 2023. The Commission received 18 initial comments and 3 reply comments.[49]

III. Need for Reform

24. As the Commission explained in the NOPR, a number of events have demonstrated the challenges to transmission planning and operations of the Bulk-Power System posed by gaps in the Reliability Standards specific to IBRs.[50] In this final action, we continue to find that as the resource mix trends towards higher penetrations of IBRs, the need to reliably integrate these resources into the Bulk-Power System is expected to grow, and that the currently effective Reliability Standards do not adequately address IBR reliability risks.[51] The continuing risks that the increasing penetration of IBRs pose to the reliable operation of the Bulk-Power System underscore the need for mandatory Reliability Standards to address these issues on a nationwide basis.

25. NERC, groups such as the Institute of Electrical and Electronics Engineers (IEEE), and other entities have attempted to address IBR-related reliability concerns at the manufacturer, state, local, or individual entity level over the past several years.[52] While the various ongoing IBR-related projects are important efforts, the absence of a comprehensive plan to require that the increasing numbers of IBRs are reliably interconnected, planned for, and operated on the Bulk-Power System limits those individual projects' overall impact. Moreover, these individual efforts could lead to inconsistent results that fail to fully address the gaps identified herein, a concern that could be resolved by addressing all IBR issues through the Reliability Standards. Therefore, to help ensure that a broader range of reliability concerns related to the impacts of IBRs on the Bulk-Power System are addressed, that any necessary new requirements apply nationwide, and that any new rules are mandatory, we find that it is imperative for NERC to develop new or modified Reliability Standards as directed in this final action to address reliability concerns related to IBRs at all stages of interconnection, planning, and operations. However, we note that the directives to NERC in this final action are intended to complement other ongoing NERC and Commission actions to address the impacts of all IBRs on the Bulk-Power System, as well as existing voluntary efforts underway, and are not intended to supersede or interfere with these efforts.

A. Current Actions Are Insufficient To Address IBR Reliability Risks

26. As explained in the NOPR, at least 12 documented events on the Bulk-Power System [53] show IBRs acting unexpectedly and adversely in response to normally cleared transmission line faults on the Bulk-Power System, each highlighting one or more common mode failures of IBRs of various sizes and voltage connection levels.[54]

27. In addition to those 12 documented events discussed in the NOPR, on June 4, 2022, an IBR-related disturbance near Odessa, Texas (the third in this location) occurred. During this disturbance, a normally cleared single-line-to-ground fault resulted in a total loss of 2,555 MW of synchronous and IBR generation, and system frequency dropped to 59.7 Hz.[55] This is the largest (to date) NERC-recorded IBR-related disturbance event and the total loss of generation resources was one and half times larger than the average loss of the 12 preceding reported events. The NERC and Texas Reliability Entity, Inc. (Texas RE) joint report, issued in December 2022, explains that this event is significant because the size of this disturbance nearly exceeded the Texas Interconnection Resource Loss Protection Criteria (*i.e.,* 2,750 MW) defined in Reliability Standard BAL–003–2,[56] which is used to establish the largest credible contingency for frequency stability in an interconnection.[57]

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[47] *Id.* (citing Essential Reliability Services Concept Paper at vi).

[48] *Id.* P 7.

[49] A list of commenters to the NOPR and the abbreviated names used in this final action appear in Appendix A. Interventions are not necessary to file comments in a rulemaking. Nevertheless, Acciona Energy USA Global LLC, Cordelio USA, Inc., Electricity Consumers Resource Council, the Federal Energy Advocate, the Public Utilities Commission of Ohio, Georgia Transmission Corporation, GlidePath Development, LLC, Monitoring Analytics, LLC, and Old Dominion Electric Cooperative filed motions to intervene.

[50] *See* NOPR, 181 FERC ¶ 61,125 at PP 24–26.

[51] *Id.* PP 26–27.

[52] For example, to address gaps in data and model validation and to facilitate sharing and combining of neighboring planning models, ISO New England (ISO–NE) has taken steps to retire obsolete and unapproved models within its own footprint. *See* ISO–NE, *Generator Data Submittal Requirements—Planning, Topic Retiring Obsolete and NERC Non-Approved Models,* 121–125 (Jan. 24, 2023), *https://www.iso-ne.com/static-assets/documents/2023/01/20230124-gen-data-submittal-requirements-planning.pdf.*

[53] The 12 events report an average of approximately 1,000 MW of IBRs entering into momentary cessation or tripping in the aggregate. The 12 Bulk-Power System events are: (1) the Blue Cut Fire (August 16, 2016); (2) the Canyon 2 Fire (October 9, 2017); (3) Angeles Forest (April 20, 2018); (4) Palmdale Roost (May 11, 2018); (5) San Fernando (July 7, 2020); (6) the first Odessa, Texas event (May 9, 2021); (7) the second Odessa, Texas event (June 26, 2021); (8) Victorville (June 24, 2021); (9) Tumbleweed (July 4, 2021); (10) Windhub (July 28, 2021); (11) Lytle Creek (August 26, 2021); and (12) Panhandle Wind Disturbance (March 22, 2022).

[54] NOPR, 181 FERC ¶ 61,125 at P 4.

[55] A power system deviating from 60 Hz indicates there is a generation and load imbalance. When the generation loss is too large, automatic under-frequency load shedding is used to rebalance the power system to prevent cascading failures that lead to blackouts. In Texas, the automatic under-frequency load shed (UFLS) program is set to trigger a sudden loss of load at 59.3 Hz. *See generally* Public Utility Commission of Texas, *Load Shed Protocols for the Electric Reliability Council of Texas (ERCOT) Region,* (Aug. 31, 2022), *https://ftp.puc.texas.gov/public/puct-info/agency/resources/reports/leg/PUC_Load_Shed_Protocols_Study.pdf. See also* NERC Newsroom Announcement *Odessa Disturbance Illustrates Need for Immediate Industry Action on Inverter-Based Resources* (Dec. 8, 2022), *https://www.nerc.com/news/Headlines%20DL/OdessaDisturbance_08DEC22.pdf* (explaining that ''[t]he 2022 Odessa disturbance was a Category 3a event in the NERC Event Analysis Process, and the combined loss of generation nearly exceeded the Texas Interconnection Resource Loss Protection Criteria.'').

[56] *See* Reliability Standard BAL–003–2 (Frequency Response and Frequency Bias Setting), attach. A.

[57] NERC and Texas RE, *2022 Odessa Disturbance,* v (Dec. 2022), *https://www.nerc.com/comm/RSTC_Reliability_Guidelines/NERC_2022_Odessa_Disturbance_Report%20(1).pdf* (Odessa 2022

Continued

28. In response to the multiple Odessa, Texas disturbances, NERC issued its third level 2 alert on IBR performance issues on March 14, 2023.[58] In the alert, NERC states its level 2 alert is necessary because the disturbances in Odessa, Texas, showed that solar PV IBR resources exhibited ''systemic performance issues'' with the potential to cause widespread outages on the Bulk-Power System.[59] Although the NERC alert pertains specifically to solar PV resources, the alert recommendations may be applicable to Bulk-Power System connected battery energy storage systems. Further, NERC explains that as the penetration of Bulk-Power System-connected IBRs increases, it will be necessary to address performance deficiencies in an ''effective and efficient manner.'' [60] In the March 2023 Alert, NERC sought to gather information from registered generator owners of solar-PV (*i.e.,* IBRs) and to encourage them to implement recommendations to: (1) ensure inverter protection settings, collector system settings, and substation settings are updated or changed to mitigate inadvertent operations; and (2) ensure that facility control modes, fault ride through modes and parameters, and protections are set and coordinated to facilitate Bulk-Power System voltage and frequency ride through.[61]

29. NERC also recently issued another disturbance report covering events in Southwest Utah in the morning of April 10, 2023.[62] NERC explains that the causes of the Southwest Utah disturbance are similar to past solar PV IBR-related events.[63] NERC identifies this event as the ''first major widespread solar [PV] loss to occur in the Western Interconnection outside of California.'' [64]

30. NERC has found that distributed energy resources' (*i.e.,* IBR–DERs') responses to Bulk-Power-System disturbances can cause short term net load increases likely attributed to aggregate IBR–DERs tripping.[65] This behavior and the resulting net load increases can impact Bulk-Power-System performance.[66]

31. NERC has also issued two recent IBR-related Reliability Guidelines. In February 2023 NERC issued an updated guideline on aggregate DER modeling (DER_A model),[67] and in March 2023, NERC issued its first guideline on electromagnetic transient (EMT) modeling and studies for IBRs.[68]

32. NERC also has nine separate projects underway to update its currently effective Reliability Standards relevant to IBRs; however, these projects are still in their early stages and, even if they are completed, the results of these efforts may not fully address the reliability risks that IBRs pose to the Bulk-Power System described above.[69]

33. While we recognize NERC's ongoing efforts, systemic fault ride through deficiencies continue to result in IBRs displaying unexpected and abnormal performance during grid disturbances.[70] In fact, in the March 2023 Alert, NERC states that IBR-related issues continue to occur and has announced plans to issue an alert by the end of 2023 regarding IBR modeling issues.[71]

34. The Commission has also been actively addressing ongoing IBR-related concerns. Concurrently with the NOPR, the Commission issued an order directing NERC to identify and register owners and operators of unregistered IBRs that in the aggregate have a material impact on the reliable operation of the Bulk-Power System.[72] On February 15, 2023, as amended on March 13, 2023, NERC submitted its compliance filing, which included its work plan setting out NERC's planned activities and milestones to register generator owners and operators of IBRs. On May 18, 2023, the Commission approved NERC's work plan and associated implementation milestones.[73]

35. The Commission also recently revised the *pro forma* Large Generator Interconnection Procedures (LGIP), the *pro forma* Large Generator Interconnection Agreement (LGIA), the *pro forma* Small Generator Interconnection Procedures (SGIP), and the *pro forma* Small Generator Interconnection Agreement (SGIA) in Order No. 2023.[74] Some of those revisions address identified deficiencies

Disturbance Report) (covering events in Odessa, Texas on June 4, 2022).

[58] NERC, *Industry Recommendation: Inverter-Based Resource Performance Issues* (Mar. 2023), *https://www.nerc.com/pa/rrm/bpsa/Alerts%20DL/NERC%20Alert%20R-2023-03-14-01%20Level%202%20-%20Inverter-Based%20Resource%20Performance%20Issues.pdf* (March 2023 Alert).

[59] *See* NOPR, 181 FERC ¶ 61,125 at P 18 (explaining that the level 2 alerts recommend specific voluntary action to be taken by registered IBRs).

[60] March 2023 Alert at 1.

[61] *Id.*

[62] NERC and WECC, *2023 Southwest Utah Disturbance* (Aug. 2023), *https://www.nerc.com/comm/RSTC_Reliability_Guidelines/NERC_2023_Southwest_UT_Disturbance_Report.pdf* (Southwest Utah Disturbance Report).

[63] *Id.* at iv.

[64] *Id.*

[65] Multiple Solar PV Disturbances in CAISO: Disturbances between June and August 2021 Joint NERC and WECC Staff Report, 17–18, (Apr. 2022), *https://www.nerc.com/pa/rrm/ea/Documents/NERC_2021_California_Solar_PV_Disturbances_Report.pdf.*

[66] *San Fernando Disturbance: Southern California Event: July 7, 2020 Joint NERC and WECC Staff Report,* 12 (Nov. 2020), *https://www.nerc.com/pa/rrm/ea/Documents/San_Fernando_Disturbance_Report.pdf.*

[67] NERC, *Reliability Guideline: Parameterization of the DER_A Model for Aggregate DER* (Feb. 2023), *https://www.nerc.com/comm/RSTC_Reliability_Guidelines/Reliability_Guideline_ModelingMerge_Responses_clean.pdf* (2023 DER_A Model Guideline). The DER_A model is the approved steady state and dynamic model that industry has validated and maintained to model IBR–DERs in the aggregate and used to study the potential impacts of IBR–DERs in the aggregate on the Bulk-Power System. The term ''parameterize'' means to adjust the parameter values of a generic model to best reflect the dynamic characteristics of a user-defined model. The parameterization process aims at reducing the difference (error) between the dynamic responses of both the generic and user-defined models. *See, e.g.,* Energy Systems Integration Group, *Parameterization, https://www.esig.energy/wiki-main-page/parameterization-d1/.*

[68] NERC, *Reliability Guideline: Electromagnetic Transient Modeling for BPS-Connected Inverter-Based Resources—Recommended Model Requirements and Verification Practices* (Mar. 2023), *https://www.nerc.com/comm/RSTC_Reliability_Guidelines/Reliability_Guideline-EMT_Modeling_and_Simulations.pdf* (EMT Modeling Guideline).

[69] The current NERC standards development projects underway include: (1) Project 2021–04 (Modifications to PRC–002–2) to ensure that disturbance monitoring data is available and provided by generator owners of IBR facilities; (2) Project 2020–06 (Verifications of Models and Data for Generators) to enhance requirements for model verification; (3) Project 2022–04 (EMT Modeling) to address the inclusion of EMT modeling and studies in relevant Reliability Standards; (4) Project 2022–02 (Modifications to TPL–001–5.1 and MOD–032–1) addressing certain issues regarding appropriate inclusion of IBRs and DERs in planning assessments; (5) Project 2020–02 (Modifications to PRC–024 (Generator Ride-through)) to revise or replace current Reliability Standard PRC–024–3 with a standard that will require ride through performance from all generation resources; (6) Project 2023–02 (Performance of IBRs) to address post-event performance validation ensuring that resources perform the way they are expected or required to perform; (7) Project 2021–01 (Modifications to MOD–025 and PRC–019) to ensure that plant active and reactive power capabilities are accurately provided to planning entities for use in studies; (8) Project 2021–02 (Modifications to VAR–002–4.1) to clarify whether the generator operator of a dispersed power resource must notify its associated transmission operator upon a status change of a voltage controlling device on an individual generating unit; and (9) Project 2023–01 (EOP–004 IBR Event Reporting) to ensure timely reporting of events involving IBRs. *See* NERC, *Reliability Standards Under Development, https://www.nerc.com/pa/Stand/Pages/Standards-Under-Development.aspx.*

[70] March 2023 Alert at 6–7.

[71] *Id.* at 6.

[72] *See* IBR Registration Order, 181 FERC ¶ 61,124 at P 6.

[73] *N. Am. Elec. Reliability Corp.,* 183 FERC ¶ 61,116 (2023) (Order Approving Workplan). On August 16, 2023, NERC submitted its first progress update on its registration workplan. *See* NERC, Filing, Docket No. RD22–4–001 (filed Aug. 16, 2023).

[74] *See Improvements to Generator Interconnection Agreements & Procs.,* Order No. 2023, 88 FR 61014 (Sept. 6, 2023), 184 FERC ¶ 61,054 (2023).

with respect to IBR modeling and ride through performance by requiring that newly interconnecting non-synchronous generators (*i.e.,* IBRs) (1) submit accurate and verified models with a comparable level of accuracy as synchronous generation resources and (2) configure or set control and protection settings to ride through disturbances and continue to support system reliability during abnormal frequency conditions and voltage conditions within any physical limitations of the generating facility.[75]

36. In addition to NERC and Commission efforts, there are several voluntary industry standards and manufacturer certification efforts related to IBRs, such as the IEEE standard 2800–2022 [76] for transmission connected IBRs and IEEE standard 1547–2018 [77] and Underwriters Laboratory (UL) standard UL 1741 [78] for distributed energy resources. These efforts are intended to enhance the operating performance and control capabilities of IBRs; however, these efforts do not apply to all relevant IBRs and require adoption by state or other regulatory authorities to become mandatory and enforceable.[79]

[75] *Id.* PP 1661, 1715.

[76] IEEE, *Standard for Interconnection and Interoperability of Inverter-Based Resources (IBR) Interconnecting with Associated Transmission Electric Power Systems* (Apr. 22, 2022), *https://standards.ieee.org/ieee/2800/10453/* (IEEE 2800–2022) (establishing uniform technical minimum requirements for the interconnection, capability, and performance of IBRs for reliable integration onto the Bulk-Power System).

[77] IEEE, *Interconnection and Interoperability of Distributed Energy Resources with Associated Electric Power Systems Interfaces* (Feb. 15, 2018), *https://standards.ieee.org/ieee/1547/5915/* (IEEE 1547–2018). The IEEE 1547–2018 and more recent 2020 amendment (IEEE 1547a–2020) of this standard enhance operating performance and control capabilities of IBR–DERs. For example, IBR–DERs compliant with the IEEE standard will be equipped with the capability to ride through voltage and frequency fluctuations in support of the reliable operation of the Bulk-Power System.

[78] UL Standard 1741 Edition 3, *Inverters, Converters, Controllers and Interconnection System Equipment for Use with Distributed Energy Resources Scope, https://www.shopulstandards.com/ProductDetail.aspx?UniqueKey=40673.*

[79] The IEEE Standards Association's board approved IEEE–2800–2022 in September 2022. *See* IEEE, *IEEE Standard for Interconnection and Interoperability of Inverter-Based Resources (IBRs) Interconnecting with Associated Transmission Electric Power Systems, https://standards.ieee.org/ieee/2800/10453/* (explaining that IEEE–2800–2022 establishes uniform technical minimum requirements for the interconnection, capability, and lifetime performance of IBRs interconnecting with transmission and sub-transmission systems in North America). For IEEE–1547, states have made varied progress in adopting the standard. *See* IEEE, *IEEE Standard for Interconnection and Interoperability of Distributed Energy Resources with Associated Electric Power Systems Interfaces, https://sagroups.ieee.org/scc21/standards/1547rev/; see also* Odessa 2022 Disturbance Report at v (explaining that the 2022 Odessa Disturbance ''is a perfect illustration of the need for immediate industry action to ensure reliable operation of the [Bulk-Power System] with increasing penetrations of inverter-based resources.'').

B. Existing Reliability Standards Do Not Adequately Address IBR Reliability Risks

1. Data Sharing

37. The currently effective Reliability Standards do not require owners and/or operators of registered IBRs, transmission owners that have unregistered IBRs on their systems, or distribution providers that have IBR–DERs on their systems to provide planning coordinators, transmission planners, reliability coordinators, transmission operators, and balancing authorities with data that accurately represents IBRs. Examples of needed data may include location; capacity; telemetry; steady-state, dynamic, and short circuit modeling information; control settings; ramp rates; equipment status; and disturbance analysis data.[80] Data that accurately represents IBRs is necessary to properly plan for, operate, and analyze IBR performance on the Bulk-Power System.[81] Without data that accurately represents all IBRs, planning coordinators, transmission planners, reliability coordinators, transmission operators, and balancing authorities are not able to develop system models that accurately account for the behavior of IBRs on their system, nor are they able to facilitate the analysis of Bulk-Power System disturbances.[82]

38. While Reliability Standard MOD–032–1 (Data for Power System Modeling and Analysis), Requirement R2 requires generator owners to submit modeling data and parameters to their transmission planners and planning coordinators, it does not require generator owners to submit registered IBR-specific modeling data and parameters such as control settings for momentary cessation and ramp rates, which are necessary for modeling steady state and dynamic registered IBR performance for purposes of planning the Bulk-Power System.[83] Nor does Reliability Standard TOP–003–5 (Operational Reliability Data) require generator owners to submit such registered IBR-specific modeling data and parameters to their transmission operators or balancing authorities.[84]

39. Moreover, the currently effective Reliability Standards do not ensure that Bulk-Power System planners and operators receive disturbance monitoring data regarding all generation resources capable of having a material impact on the reliable operation of the Bulk-Power System, including registered IBRs. Such data is needed to adequately assess disturbance events (*e.g.,* a fault on the line) and the behavior of IBRs during those events. Without adequate monitoring capability, the disturbance analysis data for a system event is insufficient to effectively determine the causes of the system event.[85]

40. Limitations on the availability of event data have hampered efforts by NERC, stakeholders, and industry to determine the causes of various events since 2016. In many instances, data were limited and disturbance monitoring equipment was absent because registered IBRs interconnected at lower voltages and fell below the

[80] NOPR, 181 FERC ¶ 61,125 at P 27.

[81] NERC has provided examples of necessary planning and operational IBR data. *See, e.g.,* NERC, *Industry Recommendation: Loss of Solar Resources during Transmission Disturbances due to Inverter Settings—II,* 7–8 (May 2018), *https://www.nerc.com/pa/rrm/bpsa/Alerts%20DL/NERC_Alert_Loss_of_Solar_Resources_during_Transmission_Disturbance-II_2018.pdf* (Loss of Solar Resources Alert II) (describing examples of planning and operational IBR data); NERC and Texas RE, *Odessa Disturbance,* 20–21 (Sept. 2021), *https://www.nerc.com/pa/rrm/ea/Documents/Odessa_Disturbance_Report.pdf* (Odessa 2021 Disturbance Report) (covering events in Odessa, Texas on May 9, 2021 and June 26, 2021); *see generally* NERC and WECC, *WECC Base Case Review: Inverter-Based Resources* (Aug. 2020), *https://www.nerc.com/comm/PC/InverterBased%20Resource%20Performance%20Task%20Force%20IRPT/NERC-WECC_2020_IBR_Modeling_Report.pdf* (Western Interconnection Base Case IBR Review); NERC, *Reliability Guideline: DER Data Collection for Modeling in Transmission Planning Studies* (Sept. 2020), *https://www.nerc.com/comm/RSTC_Reliability_Guidelines/Reliability_Guideline_DER_Data_Collection_for_Modeling.pdf* (IBR–DER Data Collection Guideline).

[82] NOPR, 181 FERC ¶ 61,125 at P 28.

[83] *See* NERC, *Technical Report, BPS-Connected Inverter-Based Resource Modeling and Studies,* 35 (May 2020), *https://www.nerc.com/comm/PC/InverterBased%20Resource%20Performance%20Task%20Force%20IRPT/IRPTF&_IBR_Modeling_and_Studies_Report.pdf* (Modeling and Studies Report) (stating that Reliability Standard MOD–032–1 ''does not prescribe the details that the modeling requirements must cover; rather, the standard requirements leave the level of detail and data formats up to each [transmission planner] and [planning coordinator] to define.'') (footnote omitted).

[84] *See* NOPR, 181 FERC ¶ 61,125 at P 29 (referring to Reliability Standard TOP–003–4, the version of the standard enforceable at that time. Reliability Standard TOP–003–5 became mandatory and enforceable on April 1, 2023).

[85] NERC and WECC, *Multiple Solar PV Disturbances in CAISO,* 13 (Apr. 2022), *https://www.nerc.com/pa/rrm/ea/Documents/NERC_2021_California_Solar_PV_Disturbances_Report.pdf* (2021 Solar PV Disturbances Report) (covering four events: Victorville (June 24, 2021); Tumbleweed (July 4, 2021); Windhub (July 28, 2021); and Lytle Creek (August 26, 2021)) (explaining that the ''analysis team had significant difficulty gathering useful information for root cause analysis at multiple facilities . . . [and] this led to an abnormally large number of 'unknown' causes of power reduction for the plants analyzed'').

MVA threshold.[86] These IBRs therefore did not fall within the thresholds of the currently effective Reliability Standard PRC–002–2 (Disturbance Monitoring and Reporting Requirements) Attachment 1 requirements for equipment installation.[87] Further, the absence of adequate monitoring capability leads to the potential for unreliable operation of generation resources due to the inability to effectively gather disturbance analysis data and develop mitigation strategies to either avoid or recover from abnormal resource performance during disturbance events in the future. While Reliability Standard PRC–002–2 requires the installation of disturbance monitoring equipment at certain key nodes (*e.g.,* stability limited interfaces), and such limited placements have been adequate to provide the data necessary to analyze major system events in the past, NERC has found that the existing disturbance monitoring equipment is not sufficient (*e.g.,* lack of high speed data captured at the IBR or plant level controller and low resolution time stamping of inverter sequence of event recorder information) to analyze the widespread system events that have become more common since 2016.[88]

41. The currently effective Reliability Standards do not require Bulk-Power System planners and operators to receive modeling data and parameters regarding unregistered IBRs that, individually or in the aggregate, are capable of adversely affecting the reliable operation of the Bulk-Power System. Further, the currently effective Reliability Standards do not require that Bulk-Power System planners and operators receive modeling data and parameters that accurately represent IBR–DERs that in the aggregate have a material impact on the reliable operation of the Bulk-Power System.[89] As shown by various reports and guidelines,[90] Bulk-Power System planners and operators do not currently have the data to accurately model the behavior of registered and unregistered IBRs individually and in the aggregate, and IBR–DERs in the aggregate, for steady-state, dynamic, and short circuit studies.

2. Data and Model Validation

42. Bulk-Power System planners and operators need accurate planning, operations, and interconnection-wide models to ensure the reliable operation of the Bulk-Power System. Bulk-Power System planners and operators use electrical component models to build the generation, transmission, and distribution facility models that they combine to build their transmission area model. These models are further combined with those of their neighbors to form the interconnection-wide models, which are used to analyze the reliability of the interconnected transmission system.[91] Each of the planning, operations, and interconnection-wide models consist separately of steady state, dynamic, and short circuit models.

43. Without planning, operations, and interconnection-wide models that accurately reflect resource (*e.g.,* generation and load) behavior in steady state and dynamic conditions, Bulk-Power System planners' and operators' system models[92] are unable to adequately predict resource behavior, including momentary cessation from both registered and unregistered IBRs individually and in the aggregate, as well as IBR–DERs in the aggregate, and their subsequent impacts on the Bulk-Power System.[93]

44. The currently effective Reliability Standards do not require the use of NERC's approved component models;[94] instead, models are referred to generally in Reliability Standard MOD–032–1, Attachment 1.[95] Without requirements to use approved component models in Bulk-Power System planning and operations system models, resource

[86] NERC, *Improvements to Interconnection Requirements for BPS-Connected Inverter-Based Resources,* at 1 (Sept. 2019) (IBR Interconnection Requirements Guideline) (reporting that the majority of newly interconnecting IBRs are either connecting at voltages less than 100 kV or with capacity less than 75 MVA and therefore do not meet the size criteria in the bulk electric system definition). NERC's Commission-approved bulk electric system definition is a subset of the Bulk-Power System and defines the scope of the Reliability Standards and the entities subject to NERC compliance. *Revisions to Electric Reliability Org. Definition of Bulk Elec. Sys. & Rules of Proc.,* Order No. 773, 141 FERC ¶ 61,236 (2012) *order on reh'g,* Order No. 773–A (May 17, 2013), 143 FERC ¶ 61,053 (2013), *rev'd sub nom. People of the State of N.Y.* v. *FERC,* 783 F.3d 946 (2d Cir. 2015); NERC Glossary at 7–9.

[87] NOPR, 181 FERC ¶ 61,125 at P 32; *see also* Reliability Standard PRC–002–2, Requirement R5.1.1 (specifying dynamic disturbance recording data for generation resource(s) with gross individual nameplate rating greater than or equal to 500 MVA, and gross individual nameplate rating greater than or equal to 300 MVA where the gross plant/facility aggregate nameplate rating is greater than or equal to 1,000 MVA).

[88] *See* NOPR, 181 FERC ¶ 61,125 at P 32 n.74 (citing NERC and WECC, *April and May 2018 Fault Induced Solar Photovoltaic Resource Interruption Disturbances Report,* 23 (Jan. 2019), *https://www.nerc.com/pa/rrm/ea/April_May_2018_Fault_Induced_Solar_PV_Resource_Int/April_May_2018_Solar_PV_Disturbance_Report.pdf* (Angeles Forest and Palmdale Roost Events Report) (covering the Angeles Forest (April 20, 2018) and Palmdale Roost (May 11, 2018) events and explaining that the ''widespread nature of power reduction across many facilities poses risks to [Bulk-Power System] performance and reliability'' and finding that the ''lack of available high-speed data at multiple inverter-based resources has hindered event analysis''); San Fernando Disturbance Report at 7; Odessa 2021 Disturbance Report at 11; NERC, *Odessa Disturbance Follow-up White Paper* (Oct. 2021), *https://www.nerc.com/comm/RSTC_Reliability_Guidelines/White_Paper_Odessa_Disturbance_Follow-Up.pdf* (Odessa Disturbance White Paper)).

[89] *See* NOPR, 181 FERC ¶ 61,125 at P 80 (stating that distribution providers should be permitted to provide IBR–DER modeling data and parameters ''in the aggregate or equivalent for IBR–DERs interconnected to their distribution systems (*e.g.,* IBR–DERs in the aggregate and modeled by resource type such as wind or solar PV, or IBR–DERs in the aggregate and modeled by interconnection requirements performance to represent different steady-state and dynamic behavior.''); *see also id.* n.159 (explaining that for IBR–DERs ''a certain degree of simplification may be needed either by model aggregation (*i.e.,* clustering of models with similar performance), by derivation of equivalent models (*i.e.,* reduced-order representation), or by a combination of the two.'').

[90] *See, e.g.,* Commission Staff, *Distributed Energy Resources Technical Considerations for the Bulk Power System Staff Report,* Docket No. AD18–10–000, 11–13 (filed Feb. 15, 2018) (Commission Staff IBR–DER Reliability Report) (explaining that, absent adequate data, many Bulk-Power System models and operating tools will not fully represent the effects of IBR–DERs in aggregate); *see also* IBR–DER Data Collection Guideline at 2 (recommending that transmission planners and planning coordinators update their data reporting requirements for Reliability Standard MOD–032–1, Requirement R1 to explicitly describe the requirements for aggregate IBR–DER data in a manner that is clear and consistent with their modeling practices. The IBR–DER Data Collection Guideline also recommended that transmission planners and planning coordinators establish modeling data requirements for steady-state IBR–DERs in aggregate and coordinate with their distribution providers to develop these requirements.).

[91] *See* Reliability Standard MOD–033–2 (Steady-State and Dynamic System Model Validation).

[92] This final action uses the term ''system models'' to refer collectively to planning and operations transmission area models and interconnection-wide models.

[93] *See* IBR Interconnection Requirements Guideline at 24 (stating that a systemic modeling issue was uncovered regarding the accuracy of the IBR dynamic models submitted in the interconnection-wide base cases following the issuance of the NERC Alert related to the Canyon 2 Fire disturbance).

[94] NERC, *Libraries of Standardized Powerflow Parameters and Standardized Dynamics Models version 1,* 1 (Oct. 2015), *https://www.nerc.com/comm/PC/Model%20Validation%20Working%20Group%20MVWG%202013/NERC%20Standardized%20Component%20Model%20Manual.pdf* (NERC Standardized Powerflow Parameters and Dynamics Models) (explaining that the NERC Modeling Working Group was tasked to develop, validate, and maintain a library of standardized component models and parameters for short-circuit, powerflow, and dynamics cases. The standardized models in these libraries have documentation describing their model structure, parameters, and operation. This information has been vetted by the industry and thus deemed appropriate for widespread use in planning, operations, and interconnection-wide analysis.).

[95] *See* Reliability Standard MOD–032–1, attach. 1 (explaining that if a user-written model(s) is submitted in place of a generic or library model, it must include the characteristics of the model, including block diagrams, values, and names for all model parameters, and a list of all state variables).

owners may provide modeling data that is based on a user-defined model [96] rather than an approved and industry-vetted model.[97] The use of user-defined models in system models can be problematic because their internal model components cannot be viewed or modified, and thus they produce outputs that cannot be readily explained or verified.[98] Approved generator models that accurately reflect the generator behavior in steady state and dynamic conditions are necessary for Bulk-Power System planners and operators to adequately predict IBR behavior and the subsequent impact of IBRs on the Bulk-Power System.[99]

45. Any generation resource model's performance must be verified by the generator owner using real-world data to confirm that the generation resource model adequately reflects actual as-built settings, historic performance, and/or field-testing data.[100] The currently effective Reliability Standards MOD–026–1 (Verification of Models and Data for Generator Excitation Control System or Plant Volt/Var Control Functions) [101] and MOD–027–1 (Verification of Models and Data for Turbine/Governor and Load Control or Active Power/Frequency Control Functions) [102] require each generator owner to verify models and data for specific components of synchronous resources (*e.g.,* generator excitation control systems, plant volt/var control functions, turbine/governor and load controls, and active power/frequency controls), but they do not require a generator owner to provide verified models and data for IBR-specific controls (*e.g.,* power plant central controller functions and protection system settings) to its transmission planner. Additionally, the currently effective Reliability Standards neither require the transmission owner for unregistered IBRs to provide verified dynamic models nor require distribution providers to provide verified dynamic models of IBR–DERs in the aggregate to their transmission planners. Finally, the currently effective Reliability Standards neither require the transmission owner for unregistered IBRs nor the distribution providers for IBR–DERs in the aggregate to submit the respective dynamic models to the applicable registered entities that perform planning and operations functions.

46. Once the generator owners for registered IBRs, transmission owners for unregistered IBRs, and distribution providers for IBR–DERs in the aggregate verify plant models, Bulk-Power System planners and operators must validate and update system models (*i.e.,* planning and operation transmission area models as well as interconnection-wide models) by comparing the provided data and resulting system models against actual system operational behavior. While Reliability Standard MOD–033–2 (Steady State and Dynamic System Model Validation) requires validation using real-world data of the interconnection-wide model,[103] the currently effective Reliability Standards lack clarity as to whether models of registered IBRs, unregistered IBRs, and IBR–DERs in the aggregate are required to represent the real-world behavior of the equipment installed in the field during interconnection-wide disturbances that have exhibited common mode failures of IBRs.[104]

47. Once Bulk-Power System planners and operators validate system models,[105] there must be additional requirements for generator owners, transmission owners, and distribution providers to communicate with Bulk-Power System planners and operators to ensure that any changes to IBR settings, configurations, and ratings are updated. Otherwise, the transmission system models will not adequately represent the behavior of the actual installed equipment.[106] While Reliability Standards MOD–032–1 and MOD–033–2 include iterative updating and validation processes, Reliability Standard MOD–032–1 does not require IBR-specific modeling data and parameters, and Reliability Standard MOD–033–2 does not contemplate the technology-specific performance characteristics of registered IBRs, unregistered IBRs, and IBR–DERs in the aggregate.

48. Once Bulk-Power System planners and operators have validated system models, Bulk-Power System planners and operators need to coordinate with generator owners, transmission owners, and distribution providers so that the system models adequately represent all generation resources—including registered IBRs, unregistered IBRs, IBR–DERs in the aggregate, and synchronous generation—as well as load. Reliability Standards MOD–032–1 and MOD–033–2 do not require the applicable entities to work collaboratively to create interconnection-wide models that

[96] Some commenters use the term ''proprietary'' to describe user-defined models. For purposes of this final action, the terms ''proprietary'' and ''user-defined'' models are synonymous. A user-defined model is a unique manufacturer-specific model that does not appear on the NERC approved component model list. In Order No. 2023, the Commission defined a ''user-defined model'' as any set of programming code created by equipment manufacturers or developers that captures the latest features of controllers that are mainly software-based and represents the entities' control strategies but does not necessarily correspond to any particular generic library model. *See* Order No. 2023, 184 FERC ¶ 61,054 at P 1660.

[97] NERC Standardized Powerflow Parameters and Dynamics Models at 1 (explaining that ''[s]ome of the model structures have information that is considered to be proprietary or confidential, which impedes the free flow of information necessary for interconnection-wide power system analysis and model validation.''); *see also* NERC, *Events Analysis Modeling Notification Recommended Practices for Modeling Momentary Cessation Initial Distribution,* 1 n.4 (Feb. 2018), *https://www.nerc.com/comm/PC/NERCModelingNotifications/Modeling_Notification_-_Modeling_Momentary_Cessation_-_2018-02-27.pdf* (explaining that more detailed vendor-specific models may be used for local planning studies; however, they are generally not allowed or recommended for building interconnection-wide models).

[98] *See, e.g.,* EPRI, *Model User Guide for Generic Renewable Energy System,* 2 (June 2015), *https://www.epri.com/research/products/000000003002006525* (explaining that the ''models presented here were developed primarily for the purpose of general public use and benefit and to eliminate the long standing issues around many vendor-specific models being proprietary and thus neither publicly available nor easily disseminated among the many stakeholders. Furthermore, using multiple user-defined non-standard models within large interconnection studies, in many cases, presented huge challenges and problems with effectively and efficiently running the simulations.'').

[99] NERC Standardized Powerflow Parameters and Dynamics Models at 1 (explaining that there is a growing need for accurate interconnection-wide power flow and dynamics simulations that analyze phenomena such as: frequency response, inter-area oscillations, and interactions between the growing numbers of wide-area control and protections systems).

[100] *Id.* (explaining that the NERC Modeling Working Group was tasked to develop, validate, and maintain a library of standardized component models and parameters for powerflow and dynamics cases. The standardized models in these libraries have documentation describing their model structure, parameters, and operation. This information has been vetted by the industry and thus deemed appropriate for widespread use in interconnection-wide analysis).

[101] *See* Reliability Standard MOD–026–1.

[102] *See* Reliability Standard MOD–027–1.

[103] Reliability Standard MOD–033–2, Requirements R1, R2.

[104] NERC annually assesses the interconnection-wide model quality and publishes a report to help entities responsible for complying with Reliability Standard MOD–032 to resolve model issues and improve the cases. NERC's 2021 Case Quality Metrics Assessment indicates that planners are not able to develop accurate system models (*e.g.,* all interconnections demonstrate either a consistent performance or worsening score in the unacceptable or not recommended model metrics). *See* NERC, *Case Quality Metrics Annual Interconnection-wide Model Assessment,* 26–29 (Oct. 2021), *https://www.nerc.com/pa/RAPA/ModelAssessment/ModAssessments/2021_Case_Quality_Metrics_Assessment-FINAL.pdf.*

[105] This final action uses ''validation'' to mean the confirmation that a model reflects real world operational behaviors and uses ''verification'' to mean a model is properly parameterized and validated.

[106] *See* NOPR, 181 FERC ¶ 61,125 at P 39 n.91.

accurately reflect the real-world interconnection-wide performance and behavior of registered and unregistered IBRs individually and in the aggregate, as well as IBR–DERs in the aggregate.[107] As a result, the models developed and deployed in compliance with these standards do not contemplate that IBRs can reduce power, trip offline, or enter momentary cessation individually or in the aggregate in response to a single fault on a transmission or sub-transmission system.

3. Planning and Operational Studies

49. Once Bulk-Power System planners and operators have validated registered IBR, unregistered IBR, and IBR–DER aggregate modeling and operational data, the Reliability Standards must require that Bulk-Power System planning and operational studies account for the actual behavior of both registered IBRs and unregistered IBRs individually and in the aggregate, as well as IBR–DERs in the aggregate. The Reliability Standards do not require Bulk-Power System planning and operational studies to assess the performance and behavior of both registered and unregistered IBRs individually and in the aggregate (*e.g.,* IBRs tripping or entering momentary cessation individually or in the aggregate), as well as IBR–DERs in the aggregate. Reliability Standard TPL–001–5.1 (Transmission System Planning Performance Requirements) requires planning coordinators and transmission planners to plan to ensure reliable operations over a broad spectrum of system conditions and following a wide range of probable contingencies, but it does not require planning coordinators and transmission planners to assess the performance and behavior of registered and unregistered IBRs individually and in the aggregate, or IBR–DERs in the aggregate, during normal and contingency conditions for the reliable operation of the Bulk-Power System.[108]

NERC has stated that the currently effective Reliability Standards do not mitigate the IBR reliability risks because the IBR issues are not properly detected by models and studies.[109] NERC has also found that there is an immediate need to enhance the currently effective Reliability Standards. NERC explains that there is a need to understand the extent of inverter performance risks and modeling deficiencies as well as to gather necessary data for the currently installed fleet.[110]

4. Performance Requirements

50. The currently effective Reliability Standards do not account for the differences in response of registered IBRs and synchronous generation resources during normal and contingency conditions. The frequency of an interconnection depends on the instantaneous balance between load and generation resources, to which all resources contribute during both normal and contingency conditions. For frequency to be maintained, generation resources must remain connected to the grid and continue to support grid frequency (*i.e.,* ride through) during either loss of generation (underfrequency) or loss of load (overfrequency) related frequency deviations. Reliability Standard PRC–024–3 does not require registered IBRs (or any generator) to remain connected to the Bulk-Power System and to continue to inject current and support frequency inside the ''no trip zone.'' [111] Therefore, IBRs could continue to act adversely in response to normally cleared faults by continuing to exhibit momentary cessation and power reduction behaviors.

51. In addition, the currently effective Reliability Standards do not require registered IBRs to continually inject current and support voltage inside the ''no trip zone'' during a voltage excursion.[112] The Reliability Standards also do not contain voltage ride through performance requirements that address the unique protection and control functions of registered IBRs that can cause tripping and momentary cessation, even when the IBR voltage protection settings comply with Reliability Standard PRC–024–3.

52. Finally, the currently effective Reliability Standards do not require all generation resources that momentarily cease operation following a system disturbance to return to pre-disturbance output levels without impeded ramp rates or require that all generation resources maintain voltage phase angle synchronization with the Bulk-Power System grid voltage during a system disturbance. IBRs that lose synchronization with grid voltage (*i.e.,* phase lock loop loss of synchronism) will momentarily cease current injection into the grid during Bulk-Power System disturbance events due to protection and control settings. Such momentary cessation occurrences exacerbate system disturbances and have a material impact on the reliable operation of the Bulk-Power System.[113]

IV. Discussion

53. As discussed below, the Commission finds that the currently effective Reliability Standards do not adequately address the risks posed by the increasing numbers of IBRs connecting to the Bulk-Power System. As noted by NERC in its initial comments, IBRs can introduce significant risks to the Bulk-Power System if not integrated properly, and NERC sees addressing such risks as a high priority for the ERO.[114] While NERC has initiated various projects to address aspects of IBR reliability, we find that the actions we take in this final action are necessary to maintain the reliable operation of the Bulk-Power System. Accordingly, pursuant to section 215(d)(5) of the FPA, we adopt the NOPR proposals with some modifications and direct NERC to develop and submit new or modified Reliability Standards that address the impacts of IBRs on the reliable operation of the Bulk-Power System. Given the current and projected increase in the proportion of IBRs within the

[107] Reliability Standard MOD–032–1 is applicable to the following registered entities: (1) balancing authorities, (2) generator owners, (3) planning authorities/planning coordinators, (4) load serving entity, (5) resource planners, (6) transmission owners, (7) transmission planners, and (8) transmission service providers. NERC has deregistered the load serving entity function and has an ongoing standard drafting team project to replace this function as an applicable entity in the Reliability Standards with the distribution provider function. *See* Project–2022–02 Modifications to TPL–001 and MOD–032.

[108] Reliability Standard TPL–001–5.1 (Transmission System Planning Performance Requirements) was approved by the Commission and became effective on July 1, 2023. *See N. Am. Elec. Reliability Corp.,* Docket No. RD20–8–000 (June 10, 2020) (delegated letter order) (approving a NERC-proposed erratum to Reliability Standard TPL–001–5); *Transmission Plan. Reliability Standard TPL–001–5,* Order No. 867, 170 FERC ¶ 61,030 (2020) (approving Reliability Standard TPL–001–5).

[109] *See* Odessa 2021 Disturbance Report at 43 (explaining that ''[p]lants are abnormally responding to [Bulk-Power System] disturbance events and ultimately tripping themselves off-line. These issues are not being properly detected by the models and studies conducted during the generator interconnection study process nor during annual planning assessments.'').

[110] Odessa 2022 Disturbance Report at vii–ix.

[111] Reliability Standard PRC–024–3 is a voltage and frequency protection settings standard that specifies that a generating resource may neither trip nor enter momentary cessation (*i.e.,* cease injecting current) inside the boundaries of the frequency and voltage excursion curves. The area inside the boundaries of the frequency and voltage excursion curves is known as the ''no-trip zone.'' *See also* Reliability Standard PRC–024–3, attach. 1, nn.8, 9.

[112] The NOPR used both terms current and power when proposing to direct NERC to develop new or modified Reliability Standards that address registered IBRs' performance requirements. For clarity in this final action, we only use ''current'' when directing NERC to develop new or modified Reliability Standards that address registered IBRs' performance requirements.

[113] *See* NOPR, 181 FERC ¶ 61,125 at P 4.

[114] NERC Initial Comments at 2.

Bulk-Power System generation fleet, and for the reasons discussed in section III above, we conclude that it is necessary to direct NERC to develop new or modified Reliability Standards that address the following specific matters: (1) generator owner data sharing for registered IBRs, transmission owner data sharing for unregistered IBRs, and distribution provider data sharing for IBR–DERs in the aggregate; (2) data and model validation for registered and unregistered IBRs and IBR–DERs in the aggregate; (3) planning and operational studies for registered and unregistered IBRs individually and in the aggregate and for IBR–DERs in the aggregate; and (4) registered IBR performance requirements.

54. In directing the ERO to submit new or modified Reliability Standards, we do not direct a specific method for addressing the reliability concerns discussed herein. Rather, in this final action we identify issues that should be addressed in the NERC standards development process. Further, NERC has the discretion, subject to Commission review and approval, as to how to address the reliability concerns described below by developing one or more new Reliability Standards or modifying currently effective Reliability Standards. We direct NERC to develop new or modify the currently effective Reliability Standards to address these issues and, when these Reliability Standards are submitted to the Commission for approval, to explain in the accompanying petition how the issues are addressed in the proposed new or modified Reliability Standards. NERC may propose to develop new or modified Reliability Standards that address our concerns in an equally efficient and effective manner; however, NERC's proposal should explain how the new or modified Reliability Standards address the Commission's concerns discussed in this final action.[115]

55. We modify the NOPR proposal and direct NERC to submit an informational filing within 90 days of the issuance of the final action in this proceeding that includes a detailed, comprehensive standards development plan explaining how NERC will prioritize the development of new or modified Reliability Standards to meet the deadlines set out below, taking into account the risk posed to the reliability of the Bulk-Power System, standard development projects already underway, resource constraints, and other factors if necessary.

56. As discussed below, we are persuaded by commenters' suggestions regarding the proposed staggered groupings for new or modified Reliability Standards, and we modify the NOPR proposal to adopt NERC's proposed staggered grouping that would result in NERC submitting new or modified Reliability Standards in three stages.[116] Therefore, in its comprehensive standards development plan, NERC must submit new or modified Reliability Standards by the following deadlines. First, by November 4, 2024, NERC must submit new or modified Reliability Standards that establish IBR performance requirements, including frequency and voltage ride through, post-disturbance ramp rates, phase lock loop synchronization, and other known causes of IBR tripping or momentary cessation. NERC must also submit, by November 4, 2024, new or modified Reliability Standards that require disturbance monitoring data sharing and post-event performance validation for registered IBRs. Second, by November 4, 2025, NERC must submit new or modified Reliability Standards addressing the interrelated directives concerning: (1) data sharing for registered IBRs, unregistered IBRs, and IBR–DERs in the aggregate; and (2) data and model validation for registered IBRs, unregistered IBRs, and IBR–DERs in the aggregate. Finally, by November 4, 2026, NERC must submit new or modified Reliability Standards addressing planning and operational studies for registered IBRs, unregistered IBRs, and IBR–DER in the aggregate. NERC may expedite its development plan and submit new or modified Reliability Standards prior to the deadlines.

57. While the NOPR proposed directing NERC to include implementation dates (*i.e.,* when the standards would become mandatory and enforceable) in its standards development plan, we are persuaded by NERC's comments that the implementation of new or modified Reliability Standards is better determined through the NERC standards drafting process. Therefore, we do not adopt the NOPR proposal to direct NERC to include implementation dates in its standards development plan. Rather, the Commission will consider the justness and reasonableness of each new or modified Reliability Standard's implementation plan when it is submitted for Commission approval.[117] However, as discussed above, the number of events, NERC Alerts, reports, whitepapers, guidelines, and ongoing standards projects demonstrate the need for the expeditious implementation of new or modified Reliability Standards addressing IBR data sharing, data and model validation, planning and operational studies, and performance requirements.[118] Accordingly, the Commission will take these issues into account when it considers the proposed implementation plan for each new or modified Reliability Standard when it is submitted to the Commission for review. Moreover, as a general matter, we believe that there is a need to have all of the directed Reliability Standards effective and enforceable well in advance of 2030, at which time IBRs are projected to account for a significant share of the electric energy generated in the United States.[119]

58. We address below in further detail issues raised in the NOPR and in comments regarding: (A) Commission authority to direct the ERO to develop new or modified Reliability Standards under FPA section 215(d)(5); (B) data sharing, including registered IBR data, disturbance monitoring data, unregistered IBR data, and data for IBR–DERs in the aggregate; (C) data and model validation, including approved models, dynamic model performance, validation of system models, and coordination; (D) planning and operational studies; (E) performance requirements; and (F) the informational filing and associated timeline for Reliability Standard development.

A. Commission Authority To Direct the ERO To Develop New or Modified Reliability Standards Under Section 215 of the FPA

59. In the NOPR, the Commission preliminarily found that the currently

[115] *See, e.g.,* Order No. 693, 118 FERC ¶ 61,218 at PP 186, 297.

[116] In the NOPR, the Commission proposed a staggered approach that would result in NERC submitting new or modified Reliability Standards in three stages. *See* NOPR, 181 FERC ¶ 61,125 at PP 8, 73. In the final action, we are changing the *content* of the three staggered filings.

[117] *See* Order No. 672, 114 FERC ¶ 61,104 at P 333 (''In considering whether a proposed Reliability Standard is just and reasonable, the Commission will consider also the timetable for implementation of the new requirements, including how the proposal balances any urgency in the need to implement it against the reasonableness of the time allowed for those who must comply.'').

[118] *See supra* P 7.

[119] *See, e.g.,* U.S. Energy Information Admin., *Annual Energy Outlook 2023* (Mar. 16, 2023), *https://www.eia.gov/outlooks/aeo/narrative/index.php#TheElectricityMixinth* (projecting that renewables will account for a significant portion of the electric energy generated in the United States by 2030). The U.S. Energy Industry Association defines the major types of renewable energy sources to include resources such as biomass, hydropower, geothermal, wind, and solar (*e.g.,* Stirling cycle, solar PV, and concentric solar). *See https://www.eia.gov/energyexplained/renewable-sources/.* Of these resources, solar PV and wind generation are IBRs.

effective Reliability Standards do not adequately address the impacts of IBRs on the reliable operation of the Bulk-Power System.[120] The NOPR stated that this constitutes a reliability gap in the areas of: (1) data sharing; (2) model validation; (3) planning and operational studies; and (4) performance requirements. To carry out section 215 of the FPA, the NOPR proposed to direct NERC to develop and submit for approval new or modified Reliability Standards that address IBRs and their impacts on the reliable operation of the Bulk-Power System.

1. Comments

60. NERC supports the Commission's efforts and agrees that the currently effective Reliability Standards must be enhanced to address the reliability risks posed by IBRs.[121] Further, NERC and the majority of commenters that responded on this topic generally support the four topic areas for new or modified Reliability Standards (*i.e.,* data sharing, model validation, planning and operational studies, and performance requirements) that the Commission outlined in the NOPR.[122]

61. Commenters agree that IBRs affect the reliable operation of the Bulk-Power System and that some modifications to the currently effective Reliability Standards are warranted.[123] For example, IRC states that IBRs may have an impact on the reliability of the Bulk-Power System regardless of their size, registration status, or their interconnection level (*i.e.,* connected to transmission or distribution).[124] ACP/SEIA agree there is a need for clarity and consistency for IBRs and their Reliability Standard obligations.[125] EPRI states that its research and collaboration has shown that uniform technical performance requirements, including ride through requirements, can support system reliability.[126] Indicated Trade Associations agree that it is necessary to manage the impact of the increase of IBRs on the Bulk-Power System through new or modified Reliability Standards.[127]

62. Ohio FEA, noting that the majority of IBR-related events discussed in the NOPR predominantly took place in Texas and California, defers to the Commission's findings regarding gaps in the currently effective Reliability Standards for IBRs and emphasizes that it is the Commission's role within its FPA section 215 authority to protect Bulk-Power System reliability by directing NERC to develop new or modified Reliability Standards.[128] Nevertheless, Ohio FEA also notes that the definition of ''Bulk-Power System'' does not include facilities used in the local distribution of electric energy; and Ohio FEA emphasizes that there is a dividing line between the Commission's authority over the Bulk-Power System and its authority over its distribution system.[129] Further, Ohio FEA cautions that there could be potential conflicts in the reliability objectives, standards, and guidelines related to IBRs on the transmission system versus the distribution system.[130]

2. Commission Determination

63. We find that the directives in this final action are a valid exercise of the Commission's authority pursuant to FPA section 215(d)(5). The plain language of the statute authorizes the Commission to order the development of a Reliability Standard that ''addresses a specific matter if the Commission considers such a new or modified Reliability Standard appropriate to carry out this section.'' [131]

64. We determine that directing NERC, as the ERO, to address the specific matters pertaining to IBRs and their impact on the reliable operation of the Bulk-Power System is appropriate to carry out FPA section 215. As the NOPR stated, and as discussed in section III above, there are multiple ERO findings of the reliability impacts of IBRs, including guidelines, white papers, assessments, event reports, and NERC Alerts, among others. Further, NERC has already begun efforts to address IBR reliability issues through projects to improve the mandatory Reliability Standards.[132] As Bulk-Power System events continue to occur and the risks that IBRs can pose to reliable operation of the Bulk-Power System are demonstrated, there is an urgent need to develop and implement mandatory Reliability Standards to address these issues on a nationwide basis.

65. Section 215 of the FPA defines ''reliability standard'' as a requirement to provide for reliable operation of the Bulk-Power System.[133] FPA section 215 defines ''reliable operation'' to mean operating Bulk-Power System elements within their thermal, voltage, and stability limits to prevent or avoid instability, uncontrolled separation, or cascading failures as a result of a sudden disturbance, including a cybersecurity incident, or unanticipated failure of system elements.[134] We are aware of the Commission's jurisdictional boundaries as noted by Ohio FEA. Thus, the directives in this final action are to NERC as the ERO to develop new or modified Reliability Standards to require the reliable operation of the Bulk-Power System. While certain directives pertain to registered entities such as distribution providers obtaining aggregate data for IBR–DERs, the final action does not impose any requirements on non-registered entities or facilities used in the local distribution of electric energy.[135] Regarding Ohio FEA's concerns about the need for coordination between transmission system operators and distribution providers regarding their different performance requirements,[136] as the Commission has explained, the IBR Registration Order and NERC's related work plan do not address the registration of IBR–DERs.[137] NERC has committed to examine potential impacts of IBR–DERs on the reliable operation of the Bulk-Power System; thus, we would expect that as a part of NERC's communication plan it would consider how to address related coordination issues between transmission operators and distribution providers.[138]

[120] NOPR, 181 FERC ¶ 61,125 at P 68.

[121] NERC Initial Comments at 7.

[122] *See, e.g., id.;* AEP Initial Comments at 2; Bonneville Initial Comments at 1; CAISO Initial Comments at 1; NYSRC Initial Comments at 1.

[123] *See, e.g.,* AEU Initial Comments at 2 (agreeing the IBRs may cause adverse reliability impacts and contribute reliability benefits to the Bulk-Power System); InfiniRel Initial Comments at 1 (stating that ''[n]ew or modified Reliability Standards are necessary to address the IBR-related reliability gaps'').

[124] IRC Initial Comments at 2.

[125] ACP/SEIA Initial Comments at 4.

[126] EPRI Initial Comments at 4.

[127] Indicated Trade Association Comments at 1.

[128] Ohio FEA Initial Comments at 4.

[129] *Id.* at 5.

[130] Ohio FEA notes that transmission system operators prefer generators to ride-through short duration transmission faults, while distribution system operators typically prefer generators to trip off during distribution faults. Ohio FEA Initial Comments at 6.

[131] 16 U.S.C. 824o(d)(5).

[132] *See supra* P 32.

[133] 16 U.S.C. 824o(a)(3).

[134] *Id.* 824o(a)(4).

[135] *Id.* 824o(a)(1).

[136] Ohio FEA notes that transmission system operators prefer generators to ride-through short duration transmission faults, while distribution system operators typically prefer generators to trip off during distribution faults. Ohio FEA Initial Comments at 6.

[137] *See* Order Approving Workplan, 183 FERC ¶ 61,116 at P 48 (citing IBR Registration Order, 181 FERC ¶ 61,124 at P 1 n.1 (stating that the order does not address IBRs connected to the distribution system)). *See also id.* P 1 n.2 (citing 16 U.S.C. 824o(a)(1), which explains that the term ''Bulk-Power System'' does not include facilities used in the local distribution of electric energy).

[138] *See Id.* P 15 (explaining that NERC's communication plan outlines how NERC will coordinate with key stakeholders).

B. Data Sharing

66. In the NOPR, the Commission preliminarily found that the existing Reliability Standards are inadequate to ensure that sufficient data of registered IBRs and unregistered IBRs, and data of IBR–DERs in the aggregate, are provided to the registered entities responsible for planning, operating, and analyzing disturbances on the Bulk-Power System.[139] The Commission observed that the currently effective Reliability Standards, such as TOP–003–5 (Operational Reliability Data) and IRO–010–4 (Reliability Coordinator Data Specification and Collection),[140] require the data recipient to specify a list of data to be provided, and obligates other identified registered entities to provide the specified data. The Commission preliminarily found that these and other currently effective data-related Reliability Standards do not require generator owners, generator operators, transmission owners, and distribution providers to provide data that represents the behavior of both registered and unregistered IBRs individually and in the aggregate, as well as data of IBR–DERs in the aggregate, at a sufficient level of fidelity for Bulk-Power System planners and operators to accurately plan for, operate during, and analyze disturbances on the Bulk-Power System.[141]

67. To address this data sharing gap in the currently effective Reliability Standards, the Commission proposed to direct NERC to develop new or modified Reliability Standards that identify: (1) the registered entities that must provide certain data of registered IBRs and unregistered IBRs, as well as IBR–DER data in the aggregate; (2) the recipients of that registered IBR, unregistered IBR, and IBR–DER in the aggregate data; (3) the minimum categories or types of registered IBR, unregistered IBR, and IBR–DER in the aggregate related data that must be provided; and (4) the timing and periodicity for the provision of registered IBR, unregistered IBR, and IBR–DER in the aggregate data needed for modeling, operations, and disturbance analysis to the appropriate registered entities and the review of that data by those entities.[142]

1. Registered IBR Data Sharing

68. In the NOPR, the Commission proposed to direct NERC to develop new or modified Reliability Standards that require generator owners and generator operators of registered IBRs to provide registered IBR-specific modeling data and parameters (*e.g.,* steady-state, dynamic, and short circuit modeling information, and control settings for momentary cessation and ramp rates) that accurately represents IBRs to their planning coordinators, transmission planners, reliability coordinators, transmission operators, and balancing authorities that are responsible for planning and operating the Bulk-Power System.[143] The Commission explained that this approach would provide the registered entities responsible for planning and operating the Bulk-Power System with accurate data on registered IBRs.[144]

a. Comments

69. Commenters generally support the proposed directive to require IBR generator owners and generator operators to provide registered IBR-specific modeling data and parameters to planning coordinators, transmission planners, reliability coordinators, transmission operators, and balancing authorities.[145]

70. NERC states that poor or inadequate IBR data, models, and information have proven to be a significant issue. For example, generator owners may provide modeling data and information that is generic or based on default parameters that do not reflect the as-built facility.[146] NERC states that providing adequate modeling data and information is critical to create and maintain models that represent necessary modeling data quality and accuracy, adding that data accuracy, completeness, usability, and fidelity should be explicitly defined, tested, and verified by all applicable entities, particularly for modeling information used in reliability studies.[147]

71. Indicated Trade Associations and APS explain that the currently effective Reliability Standards may not ensure that transmission planners or operators have all necessary criteria and metrics to plan for and reliably integrate certain IBRs on the Bulk-Power System.[148] CAISO explains that its experience shows that modern IBRs are capable of complying with data sharing and data and model validation requirements.[149] Further, CAISO supports national standards establishing data sharing, and data and model validation guidelines, as a patchwork approach would be inefficient (*e.g.,* a significant number of IBRs participating in the CAISO's markets are not bound by the currently effective Reliability Standards and CAISO's standards do not bind across the Western Electricity Coordinating Council).[150]

72. SPP states that it has heard from IBR owners that they have concerns that some IBR data (and IBR–DER data) may be considered proprietary by manufacturers and difficult to obtain. Nevertheless, SPP contends that such concerns should not obstruct reliability improvements and suggests that the final action should provide the correct incentive for IBR owners to either use equipment that meets data sharing requirements (*i.e.,* equipment that is not proprietary) or develop agreements or other protections for IBR data that is considered proprietary.[151]

73. ACP/SEIA suggest modifying the directives to require generator owners and operators to share IBR data. ACP/SEIA recommend that, rather than mandating specific modeling and data submissions, planning entities should have flexibility to identify the data they need for their operations and planning activities, and that the new or modified Reliability Standards should ensure that the data requested is reasonable and necessary for improving reliability.[152]

74. AEU and ACP/SEIA ask that, in addition to data provision requirements for generator owners and operators, the Commission direct NERC to specify data sharing requirements from transmission owners to generator owners.[153] For example, AEU explains that generator owners and operators also require data from transmission owners to support accurate modeling and performance, *e.g.,* short circuit data, grid data for offshore wind, information on other power electronic devices around the IBR plant, and voltage harmonics.[154] AEU adds that putting requirements on transmission owners would be consistent with revisions being developed for NERC's Modeling, Data, and Analysis (MOD) Reliability Standards.[155]

75. ACP/SEIA, Mr. Plankey, and Ohio FEA raise security concerns and the

[139] NOPR, 181 FERC ¶ 61,125 at P 76.

[140] Reliability Standard TOP–003–5 and Reliability Standard IRO–010–4 became effective April 1, 2023.

[141] NOPR, 181 FERC ¶ 61,125 at P 76.

[142] *Id.* P 77.

[143] *Id.* P 78.

[144] *Id.*

[145] *See, e.g.,* NERC Initial Comments at 8; CAISO Initial Comments at 24.

[146] NERC Initial Comments at 8.

[147] *Id.* at 8–9.

[148] Indicated Trade Associations Initial Comments at 4–5; APS Initial Comments at 2 (indicating it largely supports Indicated Trade Associations Initial Comments but providing additional comments on specific topics).

[149] CAISO Initial Comments at 7.

[150] *Id.* at 30–31.

[151] SPP Initial Comments at 2.

[152] ACP/SEIA Initial Comments at 11–12.

[153] AEU Initial Comments at 4; ACP/SEIA Initial Comments at 12–13.

[154] AEU Initial Comments at 4.

[155] *Id.* at 5.

need for accountability and protection of data sharing.[156] Ohio FEA recommends that NERC's Electricity Information Sharing and Analysis Center (E–ISAC) could serve as a facilitator for IBR data sharing.[157]

b. Commission Determination

76. Pursuant to section 215(d)(5) of the FPA, we adopt the NOPR proposal and direct NERC to develop new or modified Reliability Standards that require registered IBR generator owners and operators to provide IBR-specific modeling data and parameters (*e.g.,* steady-state, dynamic, and short circuit modeling information, and control settings for momentary cessation and ramp rates) that accurately represent the registered IBRs to their planning coordinators, transmission planners, reliability coordinators, transmission operators, and balancing authorities that are responsible for planning and operating the Bulk-Power System. As several commenters indicate, ensuring the sharing of appropriate IBR modeling data is critical to create and maintain the models used in reliability studies, and in turn to ensure that Bulk-Power System transmission planners or operators are able to plan for, operate, and reliably integrate IBRs onto the Bulk-Power System.

77. With regard to AEU and ACP/SEIA's comments that the Commission direct NERC to specify data sharing requirements from transmission owners to generator owners and operators, we believe that this request may already be addressed through each transmission planner's existing processes. For example, the New York Independent System Operator (NYISO) and CAISO both have processes for obtaining such data after demonstrating a need for the specific information requested and that the required information protection and non-disclosure agreements are signed.[158] Nevertheless, to support accurate modeling and performance, we direct NERC to consider during its standards development process AEU and ACP/SEIA's suggested data sharing requirements when developing the framework, criteria, and necessary data exchange requirements to meet the registered IBR data sharing directive.

78. Commenters raised general concerns that mandating specific modeling and data submissions would reduce the flexibility and discretion of transmission planners and operators to identify the information they need. We find that, given the need for IBRs to operate in a predictable and reliable manner to ensure the reliable operation of the Bulk-Power System, it is necessary to establish uniform, minimum categories or types of data that must be provided so that Bulk-Power System planners and operators can predict the behavior of all IBRs. As discussed in more detail in section IV.C of this final action, we are also directing NERC to develop new or modified Reliability Standards that require the use of approved industry IBR models that accurately reflect the behavior of all IBRs during steady state, short-circuit, and dynamic conditions.

79. With regard to SPP's comment that some IBR data (and IBR–DER data) may be considered proprietary (user-defined) by manufacturers and difficult to obtain, we believe that the directives in this final action should facilitate the provision of IBR data and address these concerns further in the determination section IV.C.1 of this final action.

80. The Commission did not propose in the NOPR to address new cyber or physical security protections of IBRs beyond those in existing applicable Reliability Standards. Therefore, while we decline to direct NERC to develop IBR-specific cyber or physical security Reliability Standards for IBRs in this effort, NERC should evaluate whether there are gaps that must be addressed. We decline to direct that the NERC E–ISAC facilitate all IBR data sharing, as these suggestions fall outside the scope of this proceeding.

2. Disturbance Monitoring Data Sharing

81. In the NOPR, the Commission proposed to direct NERC to develop new or modified Reliability Standards that include technical criteria for disturbance monitoring equipment installed at buses and elements of registered IBRs to ensure disturbance monitoring data is available to Bulk-Power System planners and operators for analyzing disturbances on the Bulk-Power System and to validate registered IBR models.[159]

a. Comments

82. NERC, ACP/SEIA, CAISO, Indicated Trade Associations, and NYSRC support the proposed directive regarding disturbance monitoring data.[160] NERC agrees that disturbance monitoring data is fundamental for model validation and post-event analysis activities, and to identify reliability risks. NERC and Indicated Trade Associations both point to NERC Project 2021–04 (Modifications to Reliability Standard PRC–002–2), a NERC standard development project to modify disturbance monitoring and reporting requirements so that Bulk-Power System-connected IBRs are monitored in order to better assess disturbances.[161] NERC explains that the currently effective Reliability Standard PRC–002–2 was originally written with synchronous generation in mind, as that was the predominant form of generation in use at the time.[162] Thus, NERC explains that it is necessary to update currently effective Reliability Standard PRC–002–2 so that it requires registered IBRs to provide minimum disturbance monitoring data [163] to the planning coordinator or reliability coordinator, Regional Entity, or NERC.

83. CAISO encourages the Commission to direct NERC to consider requiring IBRs to provide additional data, whether through telemetry collections or other automated platform integrations, to enhance real-time visibility of Bulk-Power System operations.[164]

84. ACP/SEIA agree with the proposed disturbance monitoring directive but caution that there is a need to balance the burden to the generator of collecting and providing the data with the benefit of that data to reliability, *e.g.,* requiring high-speed data collection from every inverter at a plant is unnecessary because each inverter would provide nearly identical data.[165]

b. Commission Determination

85. Pursuant to section 215(d)(5) of the FPA, we adopt the NOPR proposal to direct NERC to include in the new or modified Reliability Standards technical criteria to require registered IBR generator owners to install disturbance monitoring equipment at their buses

[156] ACP/SEIA Initial Comments at 12; Mr. Plankey Initial Comments at 1; Ohio FEA Initial Comments at 9.

[157] Ohio FEA Initial Comments at 9.

[158] *See* NYISO, *What to expect when submitting a CEII Request form* (Sep. 9, 2021), *https://nyiso.force.com/MemberCommunity/s/article/What-to-expect-when-submitting-a-CEII-Request-form;* CAISO, *Application access, http://www.caiso.com/participate/Pages/ApplicationAccess/Default.aspx* (explaining that the process for secure planning and market systems data are available upon compliance with the applicable submission instructions and submittal of a non-disclosure agreement).

[159] NOPR, 181 FERC ¶ 61,125 at P 78.

[160] *See* NERC Initial Comments at 9; ACP/SEIA Initial Comments at 12; CAISO Initial Comments at 39–40; Indicated Trade Associations Initial Comments at 6; NYSRC Initial Comments at 2.

[161] NERC Initial Comments at 9; Indicated Trade Associations Initial Comments at 6.

[162] *See* NERC Initial Comments at 9.

[163] Disturbance monitoring data collection may include sequence of events recording, digital fault recording, synchronized phasor measurement unit recording, inverter oscillography recording data, and inverter and plant-level fault codes.

[164] CAISO Initial Comments at 40.

[165] ACP/SEIA Comments at 12.

and elements, to require registered IBR generator owners to provide disturbance monitoring data to Bulk-Power System planners and operators for analyzing disturbances on the Bulk-Power System, and to require Bulk-Power System planners and operators to validate registered IBR models using disturbance monitoring data from installed registered IBR generator owners' disturbance monitoring equipment.[166] We agree with NERC that updating Reliability Standard PRC–002–2 to apply to registered IBRs for disturbance monitoring data collection, including recording sequence of events, digital faults, synchronized phasor measurements, inverter oscillography, inverter and plant-level fault codes, and data retention, could be one way to accomplish this directive. We further agree with the findings in NERC reports (*e.g.,* a lack of high-speed data captured at the IBR or plant-level controller and low-resolution time stamping of inverter sequence of event recorder information has hindered event analysis) and direct NERC through its standard development process to address these findings.[167]

86. As a general matter, we agree with ACP/SEIA regarding the need to balance the burden to generator owners of collecting and providing data collected by disturbance monitoring equipment with the benefit of that data to reliability. Thus, in developing the directed data collection requirements, we direct NERC to consider the burdens of generators collecting and providing data, while assuring that Bulk-Power System operators and planners have the data they need for accurate disturbance monitoring and analysis.[168] Likewise, regarding CAISO's request that the Commission direct NERC to consider requiring registered IBRs to provide additional data, we agree that such data collections may be warranted, and direct NERC to consider through its standards development process whether additional IBR data points (*e.g.,* telemetry collections or other automated platform integrations) are needed to further enhance real-time visibility of Bulk-Power System operations.

3. Unregistered IBR and IBR–DER Data Sharing

87. In the NOPR, the Commission preliminarily found that the currently effective Reliability Standards do not ensure that Bulk-Power System planners and operators receive modeling data and parameters regarding unregistered IBRs that, individually or in the aggregate, are capable of adversely affecting the reliable operation of the Bulk-Power System. The Commission also preliminarily found that the currently effective Reliability Standards do not require that Bulk-Power System planners and operators receive modeling data and parameters regarding IBR–DERs that in the aggregate are capable of adversely affecting the reliable operation of the Bulk-Power System. The Commission preliminarily determined that planning coordinators and other entities need modeling data and parameters for both unregistered IBRs and IBR–DERs in the aggregate to assure greater accuracy in modeling.[169]

88. The Commission proposed to direct NERC to submit new or modified Reliability Standards addressing IBR data sharing that require transmission owners to provide modeling data and parameters (*e.g.,* steady-state, dynamic, and short circuit modeling information, and control settings for momentary cessation and ramp rates) to appropriate registered entities (*e.g.,* planning coordinators, transmission planners, reliability coordinators, transmission operators, and balancing authorities) for unregistered IBRs in their transmission owner areas where unregistered IBRs individually or in the aggregate materially affect the reliable operation of the Bulk-Power System.[170] The Commission similarly proposed to direct NERC to develop new or modified IBR data sharing Reliability Standards that require distribution providers to provide modeling data and parameters to appropriate registered entities (*e.g.,* planning coordinators, transmission planners, reliability coordinators, transmission operators, and balancing authorities) for IBR–DERs in the aggregate connected in their distribution provider areas where those IBR–DERs in the aggregate materially affect the reliability of the Bulk-Power System and are not otherwise subject to compliance with Reliability Standards.[171]

89. The Commission stated that this approach would be similar to that taken in other Reliability Standards that require transmission owners and distribution providers to provide certain planning and operational data received from unregistered entities to appropriate registered entities (*e.g.,* planning coordinators, transmission planners, reliability coordinators, transmission operators, and balancing authorities).[172] The Commission recognized that, given the small size and location of many of the IBR–DERs on the distribution system, it may not be practical for distribution providers to provide modeling data and parameters to model individual IBR–DERs directly.[173] The Commission instead proposed that the new or modified Reliability Standards should permit distribution providers to provide modeling data and parameters of IBR–DERs in the aggregate or equivalent for IBR–DERs interconnected to their distribution systems (*e.g.,* IBR–DERs in the aggregate and modeled by resource type such as wind or solar PV, or IBR–DERs in the aggregate and modeled by interconnection requirements performance to represent different steady-state and dynamic behavior) to appropriate registered entities (*i.e.,* planning coordinators, transmission planners, reliability coordinators, transmission operators, and balancing authorities).[174]

[166] *See* NERC, *NERC Inverter-Based Resource Performance Task Force (IRPTF)Review of NERC Reliability Standards White Paper,* at 1 (Mar. 2020), *https://www.nerc.com/pa/Stand/Project202104ModificationstoPRC0022DL/Review_of_NERC_Reliability_Standards_White_Paper_062021.pdf* (explaining that PRC–002–2 should be revised to require disturbance monitoring equipment in areas not currently contemplated by the existing requirements, specifically in areas with potential inverter-based resource behavior monitoring benefits); *see also* Odessa Disturbance White Paper at 5 (explaining there are standard features for modern inverters that should be enabled within IBR plants to better understand their response to grid events and improve overall fleet performance).

[167] *See supra* note 88.

[168] *See* Order No. 693, 118 FERC ¶ 61,218 at P 188 (in directing NERC to address or consider NOPR comments, the Commission explained that it ''does not direct any outcome other than that the comments receive consideration'').

[169] NOPR, 181 FERC ¶ 61,125 at P 79.

[170] *Id.*

[171] *Id.* (citing NERC, *Reliability Guideline: Parameterization of the DER_A Model,* 8–16 (Sept. 2019), *https://www.nerc.com/comm/RSTC_Reliability_Guidelines/Reliability_Guideline_DER_A_Parameterization.pdf* (2019 DER_A Model Guideline) (retired)).

[172] *Id.* P 80 (noting that this approach is consistent with certain currently effective Reliability Standards and citing Reliability Standard IRO–010–2 (Reliability Coordinator Data Specification and Collection), Requirement R1 (providing that ''[t]he Reliability Coordinator shall maintain a documented specification for the data . . . *including non-[bulk electric system] data*''(emphasis added)), Requirement R2 (providing that ''[t]he Reliability Coordinator shall distribute its data specification to entities''), Requirement R3 (providing that ''[e]ach . . . Transmission Owner, and Distribution Provider receiving a data specification in Requirement R2 shall satisfy the obligations of the documented specifications''); Reliability Standard PRC–006–3 (Automatic Underfrequency Load Shedding), Requirement R8 (requiring that a UFLS entity, *i.e.,* relevant transmission owner and distribution provider, ''provide data to its Planning Coordinator(s)''). Reliability Standard IRO–010–4 (Reliability Coordinator Data Specification and Collection) became effective April 1, 2023; Reliability Standard PRC–006–5 (Automatic Underfrequency Load Shedding) became effective April 1, 2021.

[173] *Id.*

[174] *Id.* (citing NERC, *Distributed Energy Resources: Connection Modeling and Reliability*

Continued

a. Comments

90. Commenters generally support the NOPR's proposed directive to require transmission owners to collect and share unregistered IBR data and to require distribution providers to collect and share modeling data and parameters of IBR–DERs in the aggregate.[175] However, several commenters raise concerns that transmission owners and distribution providers may not be able to collect all the requested data.[176]

91. NERC, AEU, IRC, and ISO–NE support the Commission's directive to revise the currently effective Reliability Standards to require that adequate and accurate data is available for all Bulk-Power System-connected resources (including unregistered IBRs).[177] NERC notes that experience has demonstrated that, without all of the relevant protections and controls being modeled and validated, the resulting interconnection and long-term planning studies will not identify possible performance issues.[178] NERC recommends that if no distribution provider is registered on a specific system, the transmission owner should coordinate with the relevant transmission planner, planning coordinator, balancing authority, transmission operator, and/or reliability coordinator for developing, submitting, and validating aggregate DER models (inclusive of IBR–DER) in planning or operational studies.[179]

92. IRC also supports Reliability Standards that facilitate the provision of IBR-related data from registered entities to reliability coordinators, planning coordinators, and other registered entities responsible for the safe and reliable operation of the Bulk-Power System.[180] To ensure the appropriate data is provided, IRC requests that the final rule specify the data to be submitted by all types of IBRs (*i.e.,* registered IBRs, unregistered IBRs, and IBR–DERs in the aggregate) and transmission devices using similar technologies.[181]

93. ISO–NE supports the Commission's proposed directive and asserts that, for smaller IBR–DERs, distribution providers are in the best position to provide aggregate models that include behind-the-meter resources.[182] ISO–NE notes that, in the absence of this aggregate data, it uses assumptions based on industry documents and benchmarking to actual events, which may not always reflect the realities of IBRs.[183] Ohio FEA supports the Commission's proposals and states that the lack of visibility into operating assets behind the meter, including ride through of IBR–DERs, is an ongoing issue.[184]

94. AEU states that distribution providers are best situated to fulfill Reliability Standard requirements related to the aggregate impact of IBR–DERs and cautions against any direct assignment of responsibility to owners or operators of individual IBR–DERs.[185]

95. CAISO, Indicated Trade Associations, and SPP generally support the proposed directive but caution that transmission owners and distribution providers should only be required to collect and share information that they can reasonably obtain, and that certain data may be difficult to obtain.[186] CAISO encourages the Commission to direct NERC to address the potential ''compliance trap'' and suggests that if the Commission is going to shift the compliance burden to transmission owners and distribution providers from the IBR generator owner or operator, there should be consistent mechanisms in place for transmission owners and distribution providers to receive such information.[187]

96. APS, AEP, LADWP, and SCE/PG&E raise concerns with the proposed directive requiring transmission owners to collect and share unregistered IBR data and distribution providers to collect and share IBR–DER data due to the lack of mechanisms or leverage in place to require the provision of the underlying data from unregistered entities.[188] For example, AEP explains that it does not have access, as a transmission owner, to all of the data necessary to model the behavior of unregistered IBRs, nor does it have access, as a distribution provider, to all the data needed to accurately model IBR–DERs in the aggregate.[189]

97. SCE/PG&E contend that it is inappropriate for NERC to develop new Reliability Standards that place a compliance burden on transmission owners and distribution providers for unregistered IBRs and IBR–DERs in the aggregate. SCE/PG&E explain that transmission owners and distribution providers would not have the requisite information to comply with the Reliability Standards and that the transmission owners and distribution providers would need to develop new procedures and provide oversight and enforcement for unregistered IBRs and IBR–DERs. SCE/PG&E further state that balancing authorities, rather than transmission owners and/or distribution providers, should be held responsible for oversight and enforcement as they have the greatest visibility into the operation of IBRs on the grid.[190]

98. APS suggests alternatives to the proposed IBR–DER directive. APS has concerns with the proposal to require distribution providers to share information provided by an unregistered entity because the IBR–DER customer may be unable or unwilling to provide the data voluntarily.[191] Therefore, APS recommends that the Commission not direct NERC to require distribution providers to collect and share IBR–DER data, but instead defer to the stakeholder process during the standards development process to determine who will provide the data, how the aggregate IBR–DER model will be developed, and how the model will be validated.[192]

99. APS and Indicated Trade Associations oppose a directive requiring transmission owners and distribution providers to collect and share data from unregistered IBRs and IBR–DERs in the aggregate. Indicated Trade Associations emphasize that, while it may be appropriate to specify the types of data to be submitted, a registered entity cannot provide data that the registered entity itself does not have and has no ability to collect.[193]

Considerations, 7 (Feb. 2017), *https://www.nerc.com/comm/Other/essntlrlbltysrvcstskfrcDL/Distributed_Energy_Resources_Report.pdf* (NERC DER Report); 2019 DER_A Model Guideline).

[175] *See generally* NERC Initial Comments at 9; AEU Initial Comments at 5; ACP/SEIA Initial Comments at 11–12 (although cautioning against mandating specific modeling and data submissions to allow entities to identify and request the data and modeling that best meets their needs); IRC Initial Comments at 2–3; ISO–NE Initial Comments at 2; NYSRC Initial Comments at 2; Ohio FEA Initial Comments at 2, 9.

[176] *See* AEP Initial Comments at 4; APS Initial Comments at 4; Trade Associations Initial Comments at 11–12; and SCE/PG&E Initial Comments at 10–11.

[177] NERC Initial Comments at 9; AEU Initial Comments at 4, 7; IRC Initial Comments at 2; ISO–NE Initial Comments at 2.

[178] NERC Initial Comments at 13.

[179] *Id.*

[180] IRC Initial Comments at 2.

[181] *Id.* at 3.

[182] ISO–NE Reply Comments at 2, 5.

[183] ISO–NE Initial Comments at 2.

[184] Ohio FEA Initial Comments at 2, 9.

[185] AEU Initial Comments at 7.

[186] CAISO Initial Comments at 31; Indicated Trade Associations Initial Comments at 9; SPP Initial Comments at 2.

[187] CAISO Initial Comments at 32, 38.

[188] APS Initial Comments at 4; AEP Initial Comments at 2; LADWP Reply Comments at 2; SCE/PG&E Initial Comments at 6.

[189] AEP Initial Comments at 4.

[190] SCE/PG&E Initial Comments at 6–7.

[191] APS Initial Comments at 4.

[192] *Id.* at 4.

[193] Indicated Trade Associations Initial Comments at 10.

APS believes that the unregistered IBRs and IBR–DERs may be unable or unwilling to provide the data voluntarily and consistently, and that transmission owners will have little to no leverage to compel delivery of data from the unregistered entities; thus, these requirements are more effectively shouldered by the IBR owners.[194] Indicated Trade Associations explain that, in most if not all cases, a transmission owner or distribution provider has only the information provided to it during the interconnection approval process and interconnection agreements may not require the IBRs to provide modeling data. Indicated Trade Associations explain that in such a case, transmission owners and distribution providers may not have the contractual right to add requirements to provide data unilaterally and retroactively. In addition, Indicated Trade Associations clarify that some IBR–DERs on the distribution system interconnect under utility retail tariffs without a separate interconnection agreement. Indicated Trade Associations aver that transmission owners and distribution providers should not be held responsible for an unregistered IBR owner that does not or cannot provide the data, and that any directives regarding unregistered IBR and IBR–DER data sharing and model validation should recognize this limitation.[195]

100. Alternatively, Indicated Trade Associations propose that the Commission could either convene a forum to consider the benefits of applying the new Reliability Standards to distribution providers with IBR–DERs in their footprints, or direct NERC to submit a study on the challenges for development and implementation of those new or modified Reliability Standards. Indicated Trade Associations also support NERC's request for flexibility in determining appropriate requirements with respect to collecting and modeling IBR–DER data. In the alternative, Indicated Trade Associations ask the Commission to limit the obligations shouldered by the distribution providers to what is feasible.[196]

101. Indicated Trade Associations recommend giving consideration to collecting data from existing registered generator owners and operators that also own some IBR–DERs.[197]

[194] APS Initial Comments at 4.

[195] Indicated Trade Associations Initial Comments at 10–13.

[196] *Id.* at 9, 12–13.

[197] *Id.* at 2.

b. Commission Determination

102. Pursuant to section 215(d)(5) of the FPA, we adopt the NOPR proposal, with modification. Specifically, as proposed in the NOPR, we direct NERC to submit to the Commission for approval one or more new or modified Reliability Standards that require: (1) transmission owners to provide to Bulk-Power System planners and operators modeling data and parameters for unregistered IBRs in their transmission owner areas that, individually or in the aggregate, materially affect the reliable operation of the Bulk-Power System and (2) distribution providers to provide to Bulk-Power System planners and operators modeling data and parameters for IBR–DERs in the aggregate in their distribution provider areas where the IBR–DERs in the aggregate materially affect the reliable operation of the Bulk-Power System.[198]

103. However, we find persuasive the comments explaining that certain data may be challenging or infeasible for the transmission owner or distribution provider to obtain.[199] We recognize that there may be limitations on the ability of certain transmission owners to provide all data about unregistered IBRs that Bulk-Power System transmission planners and operators may need for the reliable operation of the Bulk-Power System. Likewise, there may be limitations on the ability of certain distribution providers to provide all data about IBR–DERs in the aggregate that Bulk-Power System transmission planners and operators may need for the reliable operation of the Bulk-Power System. We therefore modify the NOPR proposal, as discussed below.

104. Recognizing that there may be instances in which transmission owners are unable to gather adequate unregistered IBR modeling data and parameters to create and maintain unregistered IBR models in their transmission owner areas, we modify the NOPR proposal and direct NERC to develop new or modified Reliability Standards that require each transmission owner, if unable to gather accurate unregistered IBR data or unable to gather unregistered IBR data at all, to provide instead to the Bulk-Power System planners and operators in their areas: (1) an estimate of the unregistered IBR modeling data and parameters, (2) an explanation of the limitations of the availability of data, (3) an explanation of the limitations of any data provided by unregistered IBRs, and (4) the method used for estimation. We believe that this directive appropriately balances commenters' concerns about data accessibility and burden with the established need for transmission owners to provide unregistered IBR modeling data and parameters to Bulk-Power System planners and operators in their transmission owner area. We recognize that estimated modeling data and parameters are approximations of actual modeling data and parameters. We further acknowledge that there is some degree of error in estimated modeling data and parameters. However, on balance we believe that requiring such estimates with explanation of any limitations is an improvement from not having any data at all; and that even estimates will increase the overall adequacy of models and improve the reliability of the Bulk-Power System. To support this data collection, we further direct NERC to consider commenters suggestions to implement a process or mechanism by which transmission owners would receive modeling data and parameters.[200]

105. We also recognize that there may be instances where distribution providers are similarly unable to gather adequate modeling data and parameters from IBR–DERs.[201] Accordingly, to account for instances in which distribution providers are unable to gather adequate modeling data and parameters of IBR–DERs to create and maintain IBR–DER models, we modify the NOPR proposal and direct NERC to develop new or modified Reliability Standards that require that each distribution provider, if unable to gather accurate IBR–DERs data in the aggregate or unable to gather IBR–DERs data in the aggregate at all, provide instead to

[198] *See supra* note 14 (noting that although the remaining subset of unregistered IBRs and IBR–DERs in the aggregate will not be subject to the mandatory and enforceable Reliability Standards set forth herein, they may be subject to provision of data and information to their respective transmission owners and distribution providers, as applicable, in accordance with their specific interconnection agreements; and encouraging NERC to continue its efforts to review and evaluate whether reliability gaps continue to remain and if new or modified functional registration categories or Reliability Standards are necessary).

[199] *See, e.g.,* AEP Initial Comments at 2; APS Initial Comments at 4; Indicated Trade Associations Initial Comments at 10; SCE/PG&E Initial Comments at 6, 7.

[200] *See, e.g.,* AEP Initial Comments at 2; SCE/PG&E Initial Comments at 6–7.

[201] For example, there may be no distribution providers that meet the NERC Registration Criteria in a given area (*e.g.,* greater than 75 MW of peak load directly connected to the bulk-electric system, facilities that are used in protection systems or programs for the protection of the bulk-electric system, etc.), *see* NERC Rules of Procedure App. 5B (Statement of Compliance Registry Criteria) 6–7, (Jan. 19, 2021), *https://www.nerc.com/FilingsOrders/us/RuleOfProcedureDL/Appendix%205B.pdf.*

the Bulk-Power System planners and operators in their areas: (1) an estimate of the modeling data and parameters of IBR–DERs in the aggregate,[202] (2) an explanation of the limitations of the availability of data, (3) an explanation of the limitations of the data provided by IBR–DERs, and (4) the method used for estimation. In support of above, we further direct NERC to consider commenters' suggestions to implement a process or mechanism by which distribution providers would receive modeling data and parameters.[203]

106. Finally, as noted by commenters, we recognize that there may be instances where IBR–DERs are connected to an entity that does not meet the criteria for registration with NERC as a distribution provider. For those areas with IBR–DERs that in the aggregate materially affect the reliable operation of the Bulk-Power System but do not have an associated registered distribution provider, we direct NERC to determine the appropriate registered entity responsible for providing data of IBR–DERs that in the aggregate have a material impact on the Bulk-Power System, or, when unable to gather such accurate IBR–DERs data, to provide instead to the Bulk-Power System planners and operators in their areas: (1) an estimate of the modeling data and parameters of IBR–DERs that in the aggregate have a material impact on the Bulk-Power System, (2) an explanation of the limitations of the availability of data, (3) an explanation of the limitations of any data provided by the IBR–DERs that in the aggregate have a material impact on the Bulk-Power System, and (4) the method used for estimation.

107. We believe that requiring transmission owners and distribution providers to collect required data for unregistered IBRs, and IBR–DERs in the aggregate, will result in greater consistency than the piecemeal approach proposed by Indicated Trade Associations, in which some data for unregistered IBRs and IBR–DERs in the aggregate would also be provided by registered generator owners and operators. Further, we believe that transmission owners and distribution providers are in a better position to collect and estimate required data for unregistered IBRs and IBR–DERs in the aggregate that are directly connected to their respective areas than balancing authorities. We anticipate that the need for estimated data for unregistered IBRs connected to the Bulk-Power System, as opposed to actual data, and thus the burden of collecting such data, will decrease over time due to the model provision requirements in the *pro forma* LGIP and *pro forma* SGIP, as adopted in Order No. 2023,[204] and the ongoing NERC activities to register IBR generator owners and operators.[205] As transmission providers modify their interconnection agreements in compliance with Order No. 2023, we expect that the need to estimate data will decrease because validated models for smaller sized resources will begin to be submitted to transmission providers with interconnection requests under the Commission's *pro forma* SGIP. NERC's registration of previously unregistered IBRs should result in more IBRs providing data and validated models pursuant to applicable Reliability Standards.[206]

108. Regarding CAISO's concern regarding the potential ''compliance trap'' where planners and operators rely on third-party data [207] and IRC's request that the final rule specify the data to be submitted by all IBRs (*i.e.,* registered IBRs, unregistered IBRs, and IBR–DERs in the aggregate) and transmission devices using similar technologies, we direct NERC to determine through its standards development process the minimum categories or types of data that must be provided to transmission planners, transmission operators, transmission owners, and distribution providers necessary to predict the behavior of all IBRs and to ensure that compliance obligations are clear.[208] As discussed in more detail in section IV.C of this final action, we are also directing NERC to develop new or modified Reliability Standards that require the use of approved industry IBR models that accurately reflect the behavior of all IBRs during steady state, short-circuit, and dynamic conditions. By contrast, we believe that a directive to task distribution providers as the appropriate registered entity to collect and share the modeling data and parameters of IBR–DERs in the aggregate is preferable to deferring to the stakeholder process as suggested by APS. The distribution provider, as the entity providing and operating the lines between the transmission and distribution systems,[209] is the entity best situated to have access to the data necessary for accurate estimation and, other than Indicated Trade Associations that suggested the piecemeal approach already discussed above, no commenter identified other potential entities as an equally efficient option.

109. We also decline to either convene a forum to consider the benefits of applying the new Reliability Standards to distribution providers with IBR–DERs in their footprints, or direct NERC to submit a study on the challenges for development and implementation of those new or modified Reliability Standards as suggested by Indicated Trade Associations. As identified in the NOPR and expounded upon in this final action, there is a pressing need to address the gap posed by the currently effective Reliability Standards. Bulk-Power System planners and operators need to receive modeling data and parameters regarding IBR–DERs that in the aggregate are capable of adversely affecting the reliable operation of the Bulk-Power System. The additional process proposed by commenters will unnecessarily delay resolution of the identified gap. Further, regarding various comments suggesting specific timing for requiring data provision, we believe that determining when data would be available and required to be provided is better addressed during the standards development process. We encourage NERC to continue its efforts to review and evaluate whether reliability gaps continue to remain and if new or modified functional registration categories or Reliability Standards are necessary to ensure the reliable operation of the Bulk-Power System. NERC may choose to revise, or the Commission may direct further

[202] *See supra* note 89.

[203] *See infra* P 147 (identifying the EPRI DER Settings Database as one potential technical source for IBR–DER estimation data).

[204] Order No. 2023, 184 FERC ¶ 61,054 at P 1659 (revising Attachment A to Appendix 1 of the *pro forma* LGIP and Attachment 2 of the *pro forma* SGIP to require each interconnection customer requesting to interconnect a non-synchronous generating facility to submit to the transmission provider specified modeling information).

[205] *See* Order Approving Workplan, 183 FERC ¶ 61,116 at P 1 (approving NERC's plan to modify its Rules of Procedure related to registration and to identify and register IBR generator owners and operators that fall below the thresholds for the bulk-electric system definition). NERC's Commission approved bulk electric system definition is a subset of the Bulk-Power System and defines the scope of the Reliability Standards and the entities subject to NERC compliance. *Revisions to Electric Reliability Org. Definition of Bulk Elec. Sys. & Rules of Proc.,* Order No. 773, 141 FERC ¶ 61,236 (2012), *order on reh'g,* Order No. 773–A, (May 17, 2013), 143 FERC ¶ 61,053 (2013), *rev'd sub nom. People of the State of N.Y.* v. *FERC,* 783 F.3d 946 (2d Cir. 2015); NERC Glossary at 7–9.

[206] NERC's August 16, 2023, Compliance Filing sets forth NERC's proposed registration plan indicating that implementation of the plan will result in registration of 97.5 percent of Bulk-Power System connected IBRs of the total IBR nameplate capacity MWs installed in 2021 of transmission and sub-transmission IBRs.

[207] CAISO Initial Comments at 38.

[208] *See* Order No. 672, 114 FERC ¶ 61,104 at PP 322, 325 (requiring that Reliability Standards be clear and unambiguous as to what is required and who is required to comply).

[209] *See* NERC Rules of Procedure, App. 5B at 6.

revisions to, registration or Reliability Standards to ensure the provision of adequate modeling data and parameters from unregistered IBRs and/or IBR–DERs in the aggregate.

C. Data and Model Validation

110. In the NOPR, the Commission preliminarily found that the currently effective Reliability Standards are inadequate to ensure that Bulk-Power System planners and operators: (1) have the steady state, dynamic, and short circuit models of the elements that make up generation, transmission, and distribution facilities that accurately reflect the generation resource's behavior in steady state and dynamic conditions; (2) have dynamic models (*i.e.,* models of equipment that reflect the equipment's behavior during various grid conditions and disturbances) that accurately represent the dynamic performance of all generation resources, including momentary cessation when applicable; (3) can validate and update resource models by comparing the provided data and resulting models against actual operational behavior to achieve and maintain accuracy of their transmission planning and operations models; and (4) have interconnection-wide models that represent all generation resources, including: (a) synchronous generation resource models; (b) load resource models; and (c) registered and unregistered IBR models, as well as IBR–DERs modeled in the aggregate. The Commission further stated that Bulk-Power System planners and operators need accurate planning, operations, and interconnection-wide models to ensure reliable operation of the system.[210]

111. Therefore, the Commission proposed to direct NERC to submit to the Commission for approval one or more new or modified Reliability Standards that would ensure that all necessary models are validated. Specifically, the Commission proposed to direct NERC to modify the Reliability Standards to require: (1) generator owners to provide validated registered IBR models to the planning coordinators for interconnection-wide, planning, and operations models; (2) transmission owners to provide validated unregistered IBR models to the planning coordinators for interconnection-wide, planning, and operations models; and (3) distribution providers to provide validated models of IBR–DERs in the aggregate to the planning coordinators for interconnection-wide, planning, and operations models. Further, the Commission proposed that the new or modified Reliability Standards should require models of individual registered and unregistered IBRs, as well as IBR–DERs in the aggregate, to represent the dynamic behavior of these IBRs at a sufficient level of fidelity for Bulk-Power System planners and operators to perform valid facility interconnection, planning, and operational studies on a basis comparable to synchronous generation resources.[211]

1. Approved Component Models

112. In the NOPR, the Commission preliminarily found that without approved generation models that accurately reflect generation resource behavior in steady state and dynamic conditions, Bulk-Power System planners and operators are unable to adequately predict IBR behavior and their subsequent impact on the Bulk-Power System.[212] The Commission found that the currently effective Reliability Standards only refer broadly to models in Reliability Standard MOD–032–1, Attachment 1, rather than requiring the use of NERC's approved component models, which would provide more accurate information about resource behavior. Thus, the Commission proposed to direct NERC to develop new or modified Reliability Standards that require the use of approved industry generic library IBR models that accurately reflect the behavior of IBRs during both steady state and dynamic conditions.

113. The Commission elaborated that NERC could reference its approved component model list in the Reliability Standards and require that only those models be used when developing planning, operations, and interconnection-wide models. The Commission further stated that the proposed directives were consistent with the recommendations in the NERC reports.[213]

a. Comments

114. AEP, CAISO, ISO–NE, LADWP, and NYSRC generally support the proposed directive to require the use of approved industry generic library IBR models [214] (*e.g.,* NERC's approved model list) instead of user-defined models.[215] As an owner of registered IBRs, unregistered IBRs, and IBR–DERs, AEP confirms that transmission owners and distribution providers need consistent and accurate data to properly model IBR behavior.[216]

115. CAISO supports the use of approved industry generic library IBR models but suggests that, instead of the NERC approved model list, the WECC models should be used when developing national standards for model development and validation.[217] CAISO explains that the WECC models have been the subject of numerous research projects undertaken for the purpose of validating various components and suggests that NERC and its stakeholders could use this experience when developing standards for model development and validation.[218] CAISO notes that even unregistered IBRs are required to provide dynamic models from the manufacturer using the latest WECC approved dynamic models.[219]

116. LADWP explains that it is challenging for transmission providers to obtain accurate IBR model information, and often the supplied modeling data is generic and neither adequate nor high fidelity.[220] NYSRC supports establishing validation processes for IBR projects and plant component models and ensuring that detailed verifiable models and data are available for planning and operational studies.[221] NYSRC explains that such component models may include individual solar, wind, or storage devices, plant protection systems, plant controllers, ancillary equipment, and interconnection equipment (transformers and transmission lines). NYSRC also suggests that the Commission allow for and consider making clear in any resulting rules or requirements that provide for mandatory delivery by equipment manufacturers and project developers of detailed, equipment specific, verifiable manufacturer's models and data necessary for planning and operational studies.[222]

[210] NOPR, 181 FERC ¶ 61,125 at P 82.

[211] *Id.* P 83.

[212] *Id.* P 86 (citing NERC Standardized Powerflow Parameters and Dynamics Models).

[213] *Id.*

[214] Various commenters reference the type of transmission power system models used for transmission steady state and dynamic assessments with a variety of synonymous names. These conventional transmission power system simulation models may be referred to as root mean square models or positive-sequence models. These synonymous model names are sometimes used in combinations and appended to the terms generic or standardized library models. This final action uses the most simplified term ''generic library model'' to describe the approved collection of industry transmission power system models used for steady state, dynamic, and short-circuit assessments.

[215] AEP Initial Comments at 3; CAISO Initial Comments at 1; ISO–NE Reply Comments at 2–3; LADWP Reply Comments at 3 NYSRC Initial Comments at 4.

[216] AEP Initial Comments at 3–4.

[217] CAISO Initial Comments at 29.

[218] *Id.*

[219] *Id.* at 26.

[220] LADWP Reply Comments at 3.

[221] NYSRC Initial Comments at 3.

[222] *Id.*

117. NERC opposes requiring entities to rely solely on standardized generic library models because such models may not be able to fully represent IBR behaviors.[223] Instead, NERC supports establishing an acceptable model list that identifies which models to use for specific types of studies.[224] NERC explains that while user-defined models have some drawbacks, the Commission should not preclude their use. NERC also notes that entities may rely on different modeling practices or types of models and, therefore, recommends an approach that combines: (1) a positive sequence standard library model; (2) a positive sequence user-defined model; (3) a detailed EMT model; and (4) a model benchmarking report that compares all models.[225] NERC adds that entities should correctly parameterize all of these models when performing benchmarking testing to reflect the as-built equipment installed in the field and include an explanation to the receiving entity of any limitations with the models.[226]

118. Regarding the use of user-defined models, EPRI states that both generic library models and user-defined models are important to use—provided that both types of models are appropriately parameterized and validated. EPRI further explains that user-defined models may be more accurate in certain kinds of studies that require unique controls or protection strategies, which generic models may not have. EPRI therefore suggests that the Commission consider requiring both validated user-defined models and validated generic library models.[227]

119. While ACP/SEIA generally support the Commission's proposed directive to require NERC to develop Reliability Standards that address modeling of IBRs, they recommend giving the transmission service provider the discretion to require user-defined models, generic library models (with site-specific parameterization), or both.[228]

120. ISO–NE explains that it only accepts a user-defined model if there is no generic library model that could be used.[229] ISO–NE explains that it has found that user-defined models are not uniform and may conflict with other user-defined models. Accordingly, ISO–NE supports the Commission's proposal to require the use of approved industry generic library models or, if the Commission declines to proceed with the proposed directive, asks that the final rule either not require the use of user-defined models or allow entities to preclude their use.[230]

121. Although the Commission did not propose to include directives addressing EMT models, multiple commenters suggest that the Commission include requirements for EMT models in the final rule.[231]

b. Commission Determination

122. Pursuant to section 215(d)(5) of the FPA, we adopt the NOPR proposal and direct NERC to develop new or modified Reliability Standards that require the use of approved industry generic library IBR models that accurately reflect the behavior of IBRs during steady state, short-circuit, and dynamic conditions when developing planning, operations, and interconnection-wide models. For example, the new or modified Reliability Standards could reference the NERC approved component model list, which defines the models that may be used, and those models that may not be used, for specific types of studies.[232] This approved component model list includes WECC's IBR models. Without requiring the use of approved industry generic library models, Bulk-Power System planners and operators may not be able to create system models that adequately predict IBR behaviors and subsequent impacts on the Bulk-Power System.[233]

123. We decline to modify the NOPR proposal to allow NERC the discretion to include alternatives to approved industry generic library models in any new or modified Reliability Standards, and we similarly decline to modify the NOPR proposal to allow transmission providers the discretion to diverge from the approved nation-wide component model list. While Order No. 2023 allows interconnection customers to submit novel user-defined models with their interconnection requests,[234] the risks associated with the use of user-defined models in the interconnection context are substantially different than in the Bulk-Power System operations and planning context. Specifically, interconnection studies require the transmission provider to study impacts from integrating a new resource on their system; these internal models are not typically shared or combined with models from neighboring systems. In contrast, in the transmission planning and operations context, planning coordinators, transmission planners, transmission operators, and balancing authorities combine models on both a regional and interconnection-wide basis to assess and mitigate impacts from a number of system conditions and contingencies on their portion of the Bulk-Power System. In the event of non-convergence or other problems with the model, a user-defined model, if not appropriately parameterized and not submitted with open-source code or dynamic link library and code files, may not allow internal model components to be viewed or modified, which would impede the ability of planning coordinators, transmission planners, transmission operators, and balancing authorities to remediate any issues. Accordingly, while user-defined models may be acceptable to an individual transmission provider when building its own models and studying its own system, which we are not prohibiting here, the use of a standard set of approved industry generic library models is essential to creating Bulk-Power System planning and operations system models (*i.e.,* combining models between neighboring entities and for interconnection-wide models) so that Bulk-Power System planners and operators can adequately predict behaviors and subsequent impacts to the reliable operation of the Bulk-Power System.

124. We direct NERC to determine through its standards development process which nation-wide approved component models are needed to build IBR plant models for steady state, short-circuit, and dynamics studies. We acknowledge NERC's comment that user-defined models may be helpful for specific local reliability studies; however, the user-defined model cannot be used in place of nation-wide approved component models for regional analysis or interconnection-wide analysis because the user-defined model may cause non-convergence and other issues.[235] However, NERC may

[223] NERC Initial Comments at 15–16.

[224] *Id.*

[225] *Id.* at 16.

[226] *Id.*

[227] EPRI Initial Comments at 17.

[228] ACP/SEIA Initial Comments at 12–13.

[229] ISO–NE Reply Comments at 3.

[230] *Id.*

[231] *See, e.g.,* NERC Initial Comments at 13; ACP/SEIA Initial Comments at 12; SPP Initial Comments at 3; EPRI Initial Comments at 18; Indicated Trade Associations Initial Comments at 7 (although also noting that EMT modeling can be burdensome to industry); ISO–NE Initial Comments at 2–3.

[232] *See* NERC Standardized Powerflow Parameters and Dynamics Models.

[233] NOPR, 181 FERC ¶ 61,125 at P 36.

[234] *See* Order No. 2023, 184 FERC ¶ 61,054 at P 1660.

[235] *See* NERC, *Libraries of Standardized Powerflow Parameters and Standardized Dynamics Models,* Ver. 1 at 1 (Oct. 15, 2015), *https://www.nerc.com/comm/PC/Model%20Validation%20Working%20Group%20MVWG%202013/NERC%20Standardized%20Component%20Model%20Manual.pdf* (explaining that since Bulk-Power System planning and operations system models are constructed using

allow the submission of user-defined models alongside the approved industry generic IBR model. Various entities do not accept user-defined models or only accept them for limited instances along with the open-source code which then allows internal model components to be viewed and modified. For example, PJM does not accept user-defined models and requires generic models for model verification in accordance with currently effective Reliability Standards MOD–026–1 and MOD–027–1.[236] NYISO accepts a user-defined model in limited instances but requires either the open-source code (allowing anyone to access the internal model) or dynamic link library data and code files (compiled code that must be decompiled to view the internal model) that must be supplied for existing power flow software and in perpetuity.[237]

125. Accordingly, we direct NERC to develop new or modified Reliability Standards that require the sole use of nation-wide approved component generic library models for system models to facilitate the exchange of neighboring entities' respective planning and operation models and to build interconnection-wide models. One example of a way NERC could meet this directive would be to require an equivalent generic library model along with all submissions of user-defined models so that the generic library model can be used when combining neighboring transmission system models and in interconnection-wide models.

126. With respect to NERC's recommendation for model benchmarking, we direct NERC to determine through its standards development process whether the development of benchmark cases to test model performance and a subsequent report comparing model performance are needed and at what periodicity.

127. Many commenters request that the Commission consider requiring the inclusion of EMT models in the new or modified Reliability Standards. In Order No. 2023, the Commission required interconnection customers to submit EMT models with their interconnection requests only if the transmission provider performs an EMT study as part of its interconnection study process.[238] We decline here, however, to direct NERC to require EMT models at this time because EMT models are typically used to examine the electromagnetic transient behavior of individual generation resources and to study plant-to-plant interactions. EMT models are not used to build interconnection-wide models or perform respective studies and, as such, requiring their inclusion would not address the reliability gaps identified in section III above, which are the subject of the directives in this final action. However, we note that NERC has existing and ongoing Reliability Standards projects that include EMT studies,[239] and we encourage NERC and stakeholders to continue working in this area.

2. Verification of IBR Plant Dynamic Model Performance

128. In the NOPR, the Commission proposed to direct NERC to require the generator owners of registered IBRs and the transmission owners that have unregistered IBRs on their systems to provide dynamic models that accurately represent the dynamic performance of facilities of registered IBRs and facilities of unregistered IBRs, including momentary cessation and/or tripping, and all ride through behavior to the planning coordinators, transmission planners, reliability coordinators, transmission operators, and balancing authorities. The Commission further proposed to direct NERC to require distribution providers that have IBR–DERs on their systems to ensure that the aggregated dynamic models (*i.e.,* plant models that describe the behaviors of all IBRs installed and controlled at a single electrical location) provided to the planning coordinators, transmission planners, reliability coordinators, transmission operators, and balancing authorities accurately represent the dynamic performance of IBR–DER facilities in the aggregate, including momentary cessation and/or tripping, and all ride through behavior (*e.g.,* IBR–DERs in the aggregate modeled by interconnection requirements performance to represent different steady-state and dynamic behavior).[240]

129. In the NOPR, the Commission noted that the currently effective Reliability Standards do not require generator owners to provide verified models and data for IBR-specific controls (*e.g.,* power plant central controller functions and protection system settings), do not require transmission owners to provide verified dynamic models for unregistered IBRs, and do not require distribution providers to provide verified dynamic models for IBR–DERs in the aggregate. The Commission therefore proposed to direct NERC to develop new or modified Reliability Standards that account for the technological differences between IBRs and synchronous generation resources.

a. Comments

130. Commenters generally support the proposed NOPR directive that the new or modified Reliability Standards require that entities verify all IBR models.[241] For example, NERC confirms that the currently effective Reliability Standards, such as MOD–026–1 and MOD–027–1, which pertain to model verification, could be enhanced by requiring entities to verify that the models are of sufficient accuracy and to make corrections in a timely manner.[242] Additionally, NERC states that it has recommended that the Project 2020–06 (Verifications of Models and Data for Generators) standard drafting team employ a more comprehensive model validation process. This includes equipment manufacturer engagement (*e.g.,* by attesting to model quality), submitting as-built protection and controls, hardware-in-the-loop testing, testing/operations data, and considering future IEEE P2800.2 model validation and verification procedures.[243]

thousands of individual component models, there can be problems when using models that are proprietary or confidential, because it ''impedes the free flow of information necessary for interconnection-wide power system analysis and model validation.'' Further, the document recommends ''an industry-wide forum for discussing the validity of these various model structures'' and that ''industry should agree upon standardized component model structures and associated parameters for particular types of equipment.'').

[236] *See* PJM, *Guidance for NERC MOD–026–027 Generation Owner Preparation & Submittal,* 5 (Aug. 28, 2022), *https://www.pjm.com/-/media/library/whitepapers/compliance/20220828-guidance-for-go-to-prepare-nerc-mod-026-027-and-submittal.ashx* (explaining that ''user-defined models are not acceptable. PJM requires submittal of generic models with appropriate due diligence made to closely match unit performance'').

[237] *See* NYISO, *Reliability Analysis Data Manual,* 22 (Dec. 2022), *https://www.nyiso.com/documents/20142/2924811/M-24-RAD-Att%20B-v2022-12-07-Final.pdf/d91ccb08-d34b-1890-c85a-baa21712d9d4* (explaining that if a user-defined model is provided then a technical justification must accompany the model along with the open-source code of the model; if the open-source code cannot be provided then all dynamic link library data and code files must be supplied for existing power flow software and all future versions of the power flow software).

[238] *See* Order No. 2023, 184 FERC ¶ 61,054 at P 1659.

[239] *See* NERC Initial Comments at 14 (describing multiple EMT modeling projects including a taskforce, Reliability Standards Project 2022–04 (EMT Modeling), and a reliability guideline).

[240] NOPR, 181 FERC ¶ 61,125 at P 84.

[241] Although the NOPR and this final action use ''verification'' to mean the model is properly parameterized and validated, and ''validation'' to mean the confirmation that models reflect real world operational behaviors, commenters use the terms verification and validation interchangeably in their responses.

[242] NERC Initial Comments at 12 (stating that NERC Project 2020–06 (Verifications of Models and Data for Generators) is already developing revisions to enhance requirements for model verification).

[243] *Id.* at 17.

131. EPRI supports dynamic model verification and generally recommends that the new or modified Reliability Standards use the precise language and definitions as published in the industry standards and aligning requirements with leading international practice and grid codes.[244] EPRI points to the IEEE P2800.2 test and verification procedures currently under development as an example of how NERC may align with industry requirements for IBR plant model verification. Specifically, EPRI explains that the IEEE P2800.2 working group is developing a recommended practice for test and verification procedures that will include procedures, criteria, and definitions.[245]

132. To ensure the appropriate dynamic model data is provided, IRC requests that the final rule specify that the data to be submitted by transmission devices using similar technologies include data to study IBR dynamic behavior (*e.g.,* data for EMT studies).[246] Further, IRC suggests including the equipment testing and field tests as a part of model validation to show that the models accurately represent the equipment as installed in the field. IRC also recommends including requirements to model and study IBR installations to capture certain adverse control interactions that would be unseen by IBR owner modeling efforts but would still create reliability issues seen by the reliability coordinators, transmission planners, or planning authorities.[247]

133. CAISO supports the proposed directive to require NERC to ensure that the new or modified Reliability Standards account for verification of IBR plant dynamic model performance. CAISO emphasizes that the new or modified Reliability Standards should include requirements that enable the registered entities responsible for planning and operating the Bulk-Power System to validate data of registered IBRs and unregistered IBRs and data of IBR–DERs in the aggregate, by comparing the provided data and resulting models with actual performance and behavior.[248]

134. NERC, AEU, EPRI, and ACP/SEIA express concerns about the availability of verified IBR dynamic models. EPRI explains that transmission providers may need to reevaluate or restudy interconnection requests because site-specific verified plant models may not be available at the time of the facility interconnection studies, and the restudy would therefore create delays to the generator interconnection process.[249] Further, ACP/SEIA and LADWP raise concerns with the timelines for when such model data should be required. For example, ACP/SEIA note that as plant settings change, it may be difficult to provide fully validated models during the interconnection process and, therefore, EMT models should only be required once equipment details and settings are final, which occurs at the end of the interconnection process.[250] LADWP similarly notes the challenge of obtaining accurate model information if the interconnection customer has not actually purchased its equipment for use in a project.[251] NERC and AEU recommend that the Commission clarify in the final rule that a registered IBR would not be subject to the dynamic model requirements until the facility has completed the facility interconnection process and achieved commercial operation.[252] AEU supports focusing the requirements proposed in the NOPR on the fidelity of models and data provided at the completion of the facility interconnection process and on the model validation steps that can be taken following a plant commissioning.[253] ACP/SEIA recommend that the Commission direct NERC to develop a process for registered generators, including IBRs, to provide validated models to transmission planners in a reasonable timeframe following completion of the facility interconnection process.[254]

135. ISO–NE requests that the Commission make clear that generator owners, transmission owners, and distribution providers—and not transmission planners or transmission operators—should provide validated models to planning coordinators. ISO–NE requests that the Commission make clear that generator owners, transmission owners, and distribution providers should provide validated models to planning coordinators, and not transmission planners or transmission operators. ISO–NE and IRC also request that the Commission state in the final rule that model validation should include equipment testing and field tests that show the models accurately represent the equipment and control settings as installed in the field.[255] Finally, ISO–NE asks the Commission to direct NERC to add distribution providers as an applicable entity for Reliability Standard MOD–032–1 so planning coordinators and transmission planners are able to obtain IBR–DER information.[256]

136. EPRI also expresses concerns about model parameterization and recommends that the Reliability Standards require generator owners, transmission owners, and distribution providers to share verified and appropriately parameterized modeling.[257]

137. NERC, APS, and Indicated Trade Associations caution that it may be difficult to verify models for unregistered IBRs and IBR–DERs in the aggregate because transmission owners and distribution providers do not own the assets they would need to address and, therefore, flexibility may be warranted.[258] NERC suggests that, in lieu of mandating that an entity provide a validated model, the Commission could require the transmission owner, distribution provider, transmission planner, or planning coordinator to work collaboratively with state regulators to identify, implement, and perform an effective model validation approach for IBR–DERs in the aggregate.[259] Additionally, the planning coordinator could, as part of system validation in Reliability Standard MOD–033–2, work with the distribution provider, transmission planner, reliability coordinator, transmission operator, and balancing authority to capture disturbance information such that the representation of IBR–DERs in the aggregate in their models can be validated against system performance.[260]

138. Indicated Trade Associations and APS express concerns about distribution providers verifying models for IBR–DERs in the aggregate. APS states that the current method does not account for distributed energy resource parameters for running field tests to verify the accuracy of the model and that field test methodologies do not exist to verify the aggregate IBR–DERs at the feeder level.[261] APS asserts that, even if the distribution providers provide an

[244] EPRI Initial Comments at 8.

[245] *Id.* at 19–20 (referring to IEEE, *Test and Verification of BPS-connected Inverter-Based Resources,* P2800–2, *https://sagroups.ieee.org/2800-2/*).

[246] IRC Initial Comments at 3.

[247] *Id.* at 4.

[248] CAISO Initial Comments at 30.

[249] EPRI Initial Comments at 22.

[250] ACP/SEIA Initial Comments at 12.

[251] LADWP Reply Comments at 3.

[252] NERC Initial Comments at 12; AEU Initial Comments at 6.

[253] AEU Initial Comments at 6.

[254] ACP/SEIA Initial Comments at 13.

[255] ISO–NE Initial Comments at 3; IRC Initial Comments at 4.

[256] ISO–NE Initial Comments at 4.

[257] EPRI Initial Comments at 12–13.

[258] NERC Initial Comments at 32; APS Initial Comments at 5; Indicated Trade Association Reply Comments at 2.

[259] NERC Initial Comments at 32.

[260] *Id.*

[261] APS Initial Comments at 5.

aggregated approximation based on a generic model without engaging manufacturers and solar developers, the root cause will not be addressed because distribution providers do not have sufficient information to create models.[262] Noting that distribution providers do not have the ability to monitor whether the individual IBR–DERs have been altered, APS indicates that it would be difficult for distribution providers to know the precise mix of IBR–DERs when developing aggregate IBR–DER modeling.

139. SPP expresses concerns with the types of models that are proposed to be verified (*i.e.,* regular power flow models and dynamic models). SPP requests that the Commission require EMT model verification because only some IBR behaviors can be recognized and evaluated in an EMT study. Specifically, SPP requests that the Commission direct NERC to identify all three model types (power flow, dynamic, and EMT) in new Reliability Standards as the models that should be verified.[263]

b. Commission Determination

140. Pursuant to section 215(d)(5) of the FPA, we adopt the NOPR proposal and direct NERC to develop new or modified Reliability Standards that require the generator owners of registered IBRs, transmission owners that have unregistered IBRs on their system, and distribution providers that have IBR–DERs on their system to provide models that represent the dynamic behavior of these IBRs at a sufficient level of fidelity to provide to Bulk-Power System planners and operators to perform valid interconnection-wide, planning, and operational studies on a basis comparable to synchronous generation resources.

141. We also direct NERC to require the generator owners of registered IBRs and the transmission owners that have unregistered IBRs on their system to provide to the Bulk-Power System planners and operators (*e.g.,* planning coordinators, transmission planners, reliability coordinators, transmission operators, and balancing authorities) dynamic models that accurately represent the dynamic performance of registered and unregistered IBRs, including momentary cessation and/or tripping, and all ride through behavior. Recognizing that there may be instances in which transmission owners are unable to gather accurate unregistered IBR modeling data and parameters to create and maintain accurate unregistered IBR dynamic models in their transmission owner areas, we modify the NOPR proposal and direct NERC to develop new or modified Reliability Standards that require each transmission owner, if unable to gather accurate unregistered IBR data or unable to gather unregistered IBR data at all, to provide instead to the Bulk-Power System planners and operators in their areas, dynamic models of unregistered IBRs using estimated data in accordance with this final action's section IV.B.3 data sharing directives. Further, we direct NERC to require distribution providers to provide to the planning coordinators, transmission planners, reliability coordinators, transmission operators, and balancing authorities aggregated dynamic models that adequately represent the dynamic performance of IBR–DERs on their systems that in the aggregate have a material impact on the Bulk-Power System, including momentary cessation and/or tripping, and all ride through behavior (*e.g.,* IBR–DERs in the aggregate modeled by interconnection requirements performance to represent different steady-state and dynamic behavior). Recognizing that there may be instances in which distribution providers are unable to gather data that accurately represents IBR–DERs in the aggregate, we modify the NOPR proposal and direct NERC to include in the proposed new or modified Reliability Standards a requirement that the distribution provider, if unable to gather data of IBR–DERs that in the aggregate have a material impact on the Bulk-Power System, provide to the Bulk-Power System planners and operators (*i.e.,* the data recipients) a dynamic model using estimated data for IBR–DERs that in the aggregate have a material impact on the Bulk-Power System, in accordance with this final action's section IV.B.3 data sharing directives. Furthermore, we acknowledge that there may be areas with IBR–DERs in the aggregate that materially impact the reliable operation of the Bulk-Power System but do not have an associated registered distribution provider. Therefore, we modify the NOPR proposal and direct NERC to determine the appropriate registered entity responsible for providing adequate data and parameters of IBR–DERs that in the aggregate have a material impact on the Bulk-Power System, and to identify the registered entities for coordinating, verifying, and keeping up to date the respective dynamic models. Finally, NERC must ensure that the proposed new or modified Reliability Standards account for the dynamic performance of IBR–DERs that in the aggregate have a material impact on the Bulk-Power System.

142. Regarding ISO–NE's request, we decline to direct NERC to require generator owners, transmission owners, and distribution providers to provide validated models to planning coordinators, and not transmission planners or transmission operators; we believe all Bulk-Power System planners and operators (*i.e.,* planning coordinators, transmission planners, reliability coordinators, transmission operators, and balancing authorities) need validated models. Additionally, we agree with ISO–NE's request to direct NERC to add distribution providers as an applicable entity for Reliability Standard MOD–032–1 so planning coordinators and transmission planners are able to obtain IBR–DER information. We believe this is addressed through directives in section IV.B.3. that require NERC to submit new or modified Reliability Standards to address this issue. We decline to explicitly direct NERC to make the modification to Reliability Standard MOD–032–1 because NERC may address this concern in an equally efficient and effective manner.

143. Regarding EPRI's recommendation to require appropriately parameterized plant models, we agree that the model verification process of an IBR model should include steps to ensure that responsible entities provide both verified and appropriately parameterized models.[264] Additionally, we agree with IRC's recommendation that the plant model verification process should include requirements for equipment to be represented as installed in the field. While we decline to include this level of detail in the directive to NERC, we nonetheless direct NERC to establish a standard uniform model verification process. A uniform model verification process will ensure that all entities use the same set of minimum requirements to verify that all generation resource (*i.e.,* synchronous and non-synchronous) models are complete and that the models accurately represent the dynamic behavior of all generation resources at a sufficient level of fidelity for Bulk-Power System planners and operators to perform valid interconnection-wide, planning, and operational studies. Therefore, we direct NERC to define the model verification

[262] *Id.*

[263] SPP Initial Comments at 3.

[264] We believe that the model verification process should ensure that the IBR model inputs are appropriately parameterized as well as confirming that the in-field equipment behavior is consistent with model behavior.

process and to require consistency among the model verification processes for existing Reliability Standards (*e.g.,* FAC–002, MOD–026, and MOD–027) and any new or modified Reliability Standards.[265]

144. As the Commission indicated in the NOPR, the DER_A model represents an appropriate basis on which to develop new or revised modeling standards for IBR–DERs.[266] In the NOPR, the Commission referenced the DER_A model as a potential solution to address the requirements for distribution providers to share modeling data and parameters regarding IBR–DERs in the aggregate and cited the use of the DER_A model as a way to implement the requirement to develop new or modified Reliability Standards.[267] The DER_A model represents IBR–DERs in the aggregate and NERC recommends it as the approved steady state and dynamic model.[268] WECC and EPRI have verified and updated the DER_A model [269] to model IBR–DERs in the aggregate and have used it to study the potential impacts of IBR–DERs in the aggregate on the Bulk-Power System. Since 2016, NERC has issued six Reliability Guidelines on the DER_A model.[270] For example, NERC's 2020 IBR–DER Data Collection Guideline explains how the distribution provider may be able to use publicly available data to provide estimated aggregate IBR–DER modeling data and parameters to the Bulk-Power System planners and operators that they may in turn use as inputs into the DER_A model.[271]

145. NERC has provided transmission planners and planning coordinators with guidance on how to perform varying extents of DER_A model verification using differing amounts of estimated and measured data to ensure the aggregate impacts from the DER_A model reflects actual Bulk-Power System disturbance behaviors.[272] Further, NERC's 2023 DER_A Model Guideline provides transmission planners and planning coordinators with a set of recommendations for developing the parameters for the DER_A dynamic model, and the recommendations can also be extrapolated to transmission operators, reliability coordinators, and other entities performing stability simulations of the Bulk-Power System where an aggregate representation of DERs (*i.e.,* both synchronous resources and IBR–DERs) is required. This guideline also provides examples on how the DER_A model parameters can be modified to account for a mixture of legacy and newer IBR–DERs.[273]

146. Accordingly, we direct NERC to develop new or modified Reliability Standards that require the use of the DER_A model or successor models to represent the behaviors of IBR–DERs that in the aggregate have a material impact on the Bulk-Power System at a sufficient level of fidelity for Bulk-Power System planners and operators to create valid planning and operations and interconnection-wide models and to be able to perform respective system studies. For example, the new or modified Reliability Standards could require models of IBR–DERs (*i.e.,* DER_A model) to adequately reflect the steady-state and dynamic aggregate resource performance in both a transmission area and across the interconnection. Additionally, estimated modeling data and parameters of IBR–DERs that in the aggregate (*i.e.,* DER_A model) have a material impact on the Bulk-Power System could be used where measured and collected data is not available. We believe requiring the DER_A model will address NERC's request for entities to work collaboratively with the state regulators to identify, implement, and perform an effective model validation approach for IBR–DERs in the aggregate as opposed to requiring validated models of IBR–DER in the aggregate that can have a material impact on the reliable operation of the Bulk-Power System.

147. Further, to address commenters' concerns about situations when distribution providers are unable to gather and provide data of IBR–DERs in the aggregate, we note the existence and suggest, but decline to direct, the use of the EPRI DER Settings Database.[274] The EPRI DER Settings Database contains the full set of configuration parameters that establish the behavior of DERs arranged in a single file, a so-called utility-required profile, which is easily exchanged between parties or used across an entire region. For example, ISO–NE coordinated with Massachusetts utilities to establish a single New England Required Utility Profile applicable to all DERs in ISO–NE.[275]

148. The ability to efficiently store and exchange DER settings files is particularly useful to help DER developers and manufacturers to know the requirements that exist within each distribution provider's service territory. NERC's 2023 DER_A Model Guideline also references the EPRI DER Settings Database as a solution for readily exchanging and managing large amounts of IBR–DER settings used to build dynamic models.[276] We encourage NERC's standard drafting team to consider the EPRI DER Settings Database as a useful resource in the standards development process when developing the necessary data exchange requirements for IBR–DERs that in the aggregate have a material impact on the Bulk-Power System.

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[265] We note NERC's statement that through Project 2020–06 (Verifications of Models and Data for Generators), it is already working to develop revisions to enhance requirements for model verification under MOD–026 and MOD–027. *See* NERC Initial Comments at 12, 17.

[266] NOPR, 181 FERC ¶ 61,125 at P 79 n.157, P 80 n.159.

[267] *Id.*

[268] *See* NERC Standardized Powerflow Parameters and Dynamics Models.

[269] *See* EPRI, *The New Aggregated Distributed Energy Resources (der_a) Model for Transmission Planning Studies: 2019 Update* (Mar. 2019) *https://www.epri.com/research/products/000000003002015320* (describing the specifications of the model and presenting the results of the benchmark tests conducted by EPRI during the approval process of the model through WECC's Modeling and Validation Working Group).

[270] The six NERC DER_A model guidelines are: (1) NERC, *Reliability Guideline: Modeling Distributed Energy Resources in Dynamic Load Models* (Dec. 2016), *https://www.nerc.com/comm/RSTC_Reliability_Guidelines/Reliability_Guideline_-_Modeling_DER_in_Dynamic_Load_Models_-_FINAL.pdf* (retired); (2) NERC, *Reliability Guideline: Distributed Energy Resources Modeling* (Sept. 2017), *https://www.nerc.com/comm/RSTC_Reliability_Guidelines/Reliability_Guideline_-_DER_Modeling_Parameters_-_2017-08-18_-_FINAL.pdf* (retired); (3) 2019 DER_A Model Guideline; (4) IBR–DER Data Collection Guideline; (5) NERC, *Reliability Guideline: Model Verification of Aggregate DER Models used in Planning Studies* (Mar. 2021), *https://www.nerc.com/comm/RSTC_Reliability_Guidelines/Reliability_Guideline%20_DER_Model_Verification_of_Aggregate_DER_Models_used_in_Planning_Studies.pdf* (Aggregate DER Model Verification Guideline); and (6) 2023 DER_A Model Guideline.

[271] IBR–DER Data Collection Guideline, 1–2 n.37 (recommending that distribution providers are the best suited to provide DER information to transmission planners and planning coordinators for modeling purposes).

[272] *See generally* Aggregate DER Model Verification Guideline.

[273] *See generally* 2023 DER_A Model Guideline.

[274] *See* EPRI, *DER Performance Capability and Functional Settings Database,* Ver. 2.1 (2021), *https://dersettings.epri.com/* (EPRI DER Settings Database*)* (a public web-based repository for the settings that utilities require for interconnection of DER. The database facilitates multiple DER setting files, and various metadata, *e.g.,* DER types, IEEE standard 1547-specified performance categories, sizes, etc.).

[275] *See* Massachusetts Technical Standards Review Group, *Common Technical Standards Manual,* 16 n.9 (Dec. 22, 2022), *https://www.mass.gov/doc/tsrg-common-guideline-2022-12-22/download; see also* ISO–NE, *Default New England Bulk System Area Settings,* 1 (2022), *https://www.mass.gov/doc/draft-in-progress-default-new-england-bulk-system-area-settings-requirement/download* (as of June 1, 2022, these ISO–NE requirements apply to all DER applications. Additionally, DER projects must be compliant with the latest revision of IEEE–1547–2018 (as amended by IEEE–1547a–2020)).

[276] *See* 2023 DER_A Model Guideline at 18–19.

149. We acknowledge NERC's, AEU's, EPRI's, and ACP/SEIA's concerns about the verified IBR dynamic models being unavailable until completion of the facility interconnection process; however, in Order No. 2023 the Commission rejected a request to afford interconnection customers an extended period of time to meet the modeling requirements.[277] Order No. 2023 requires an interconnection customer to provide the required models within the deadlines established in the *pro forma* LGIP and *pro forma* SGIP. Pursuant to those provisions, if the interconnection customer does not cure such a deficiency within the 10 business day cure period, the interconnection request will be considered withdrawn pursuant to section 3.7 of the *pro forma* LGIP and section 1.3 of the *pro forma* SGIP. Order No. 2023 requires that the existing 10 business day cure period be consistently applied to all interconnection request deficiencies and that having an extended cure period for model deficiencies would potentially introduce delays in the interconnection process.[278] Therefore, verified IBR dynamic models should be available prior to the completion of the facility interconnection process. Moreover, although the Reliability Standards will apply to a different (albeit overlapping) set of entities than Order No. 2023, we believe consistency is needed between the complimentary proceedings and therefore direct NERC to include in the new or modified Reliability Standards a similar model verification process timeline consistent with Order No. 2023 modeling deadline requirements.

150. Regarding the IRC and SPP concerns about EMT model data availability and verification, as we decline to require the use of EMT models (as explained in section IV.C.1), we also decline to direct NERC to explicitly require EMT data and verified EMT models for the same reasons.

3. Validating and Updating System Models

151. In the NOPR, the Commission explained that, after all IBR models are verified, Bulk-Power System planners and operators must validate and update transmission system models by comparing the provided data and resulting system models against actual system operational behavior. The Commission added that, while Reliability Standard MOD–033–2 requires data validation of the interconnection-wide model, the Reliability Standards lack clarity as to whether models of registered IBRs, unregistered IBRs, and IBR–DERs in the aggregate are required to represent the real-world behavior of the equipment installed in the field.[279]

152. The Commission therefore proposed to direct NERC to develop new or modified Reliability Standards that require planning coordinators, transmission planners, reliability coordinators, transmission operators, and balancing authorities to validate, coordinate, and update in a timely manner the verified data and models of registered IBRs, unregistered IBRs, and IBR–DERs by comparing their data and resulting models against actual operational behavior. Further, the NOPR proposed this validation, coordination, and update directive to achieve and maintain necessary system models that accurately reflect performance and behaviors of registered IBRs and unregistered IBRs individually and in the aggregate, as well as performance and behaviors of IBR–DERs in the aggregate.[280]

a. Comments

153. NERC, NYSRC, CAISO, and AEP support the proposed directive for planning coordinators, transmission planners, reliability coordinators, transmission operators, and balancing authorities to validate, coordinate, and update transmission planning and transmission operations system models.[281] NERC explains that its experience has shown that interconnection and long-term planning studies cannot identify possible performance issues without ''all of the relevant protections and controls being modeled and validated.'' [282] ACP/SEIA explains that new models and validation should not be required for modifications that do not reflect any material electrical performance impact.[283]

154. NERC agrees that transmission planners, planning coordinators, and reliability coordinators should have planning and operations models that represent all generation resources, including registered and unregistered IBRs, as well as aggregate representation of distributed energy resources (both synchronous and IBR).[284] NERC explains that it has a number of projects underway in this area, including Project 2020–06 (Verifications of Models and Data for Generators) and Project 2022–04 (EMT Modeling). NERC states that additional projects may be needed for clarity and model accuracy in the future, including projects to address Commission directives included in a final rule in this proceeding. NERC explains that it is also planning to issue a modeling-focused NERC Alert by the end of 2023 to better understand the extent of condition of modeling issues, which could inform future standards development efforts.[285]

155. CAISO agrees that Bulk-Power System planners and operators need accurate planning and operational information so that their own models, together with the interconnection-wide models, reflect how IBRs operate in real world scenarios.[286] APS asserts, similar to its comments regarding the difficulties of verifying models for IBR–DERs in the aggregate, that there is no feasible method (*i.e.,* comparing actual to simulated events in a systematic way) to validate IBR–DER models system wide.[287] In comparison, CAISO asserts that stakeholders could address the challenge of modeling IBR–DERs in the aggregate.[288]

b. Commission Determination

156. Pursuant to section 215(d)(5) of the FPA, we adopt the NOPR proposal and direct NERC to submit new or modified Reliability Standards that require Bulk-Power System planners and operators to validate, coordinate, and update in a timely manner the system models by comparing all generator owner, transmission owner, and distribution provider verified IBR models (*i.e.,* models of registered IBRs, unregistered IBRs, and IBR–DERs that in the aggregate have a material impact on the Bulk-Power System) and resulting system models against actual system operational behavior. NERC may implement this directive by modifying Reliability Standards MOD–026 and MOD–027 or by developing new Reliability Standards to establish requirements mandating a process to validate and keep up to date the system models. We find that this directive addresses ACP/SEIA's concerns comments regarding modification to and validation of models that do not reflect

[277] Order No. 2023, 184 FERC ¶ 61,054 at P 1666.

[278] *Id.*

[279] NOPR, 181 FERC ¶ 61,125 at P 40.

[280] *Id.* P 85.

[281] NERC Initial Comments at 10; NYSRC Initial Comments at 1; CAISO Initial Comments at 30; AEP Initial Comments at 3.

[282] NERC Initial Comments at 13 (citing NERC and Texas RE, *March 2022 Panhandle Wind Disturbance Report* (Aug. 2022), *https://www.nerc.com/pa/rrm/ea/Documents/Panhandle_Wind_Disturbance_Report.pdf* (Panhandle Disturbance Report) (covering the Texas Panhandle event (March 22, 2022)); Odessa 2022 Disturbance Report).

[283] ACP/SEIA Initial Comments at 14.

[284] *Id.* at 10.

[285] NERC Initial Comments at 11.

[286] CAISO Initial Comments at 33.

[287] APS Initial Comments at 5.

[288] CAISO Initial Comments at 35–36.

any material electrical performance impact.

157. We believe the development of new or modified Reliability Standards is an important corollary to NERC's ongoing effort to identify and register generator owners and operators of IBRs. Although NERC's registration changes will not at this time address IBR–DERs that in the aggregate have a material impact on the Bulk-Power System, we believe APS's concerns regarding system-wide model validation is addressed in NERC's Reliability Guidelines [289] and through the use of the EPRI DER Settings Database. We recognize that some distribution providers may not be able to provide a precise set of modeling data and parameters that accurately represent IBR–DERs in the aggregate. For these situations, NERC has provided a technical means to estimate in aggregate the needed IBR–DER modeling data and parameters (*i.e.,* for the DER_A model) in the IBR–DER Data Collection Guideline.[290] Further, NERC's 2021 Aggregate DER Model Verification Guideline provides transmission planners and planning coordinators with tools and techniques that can be adapted for their specific systems to verify that aggregate DER models (*i.e.* DER_A models) are a suitable representation of these resources in planning assessments.[291] Furthermore, for those areas with IBR–DERs in the aggregate that materially impact the reliable operation of the Bulk-Power System but do not have an associated registered distribution provider, we modify the NOPR proposal to direct NERC to determine the appropriate registered entity responsible for the data and parameters of IBR–DERs in the aggregate and to establish a process that requires identified registered entities to coordinate, validate, and keep up to date the system models.

4. Need for Coordination When Creating and Updating Planning, Operational, and Interconnection-Wide Data and Models

158. In the NOPR, the Commission preliminarily found that there is a ''coordination gap'' among registered entities that build and verify interconnection-wide models. The Commission noted that the functional entities and designees specified in Reliability Standards MOD–032–1 and MOD–033–2 are not required to work collaboratively to create interconnection-wide models that accurately reflect real-world interconnection-wide IBR performance and behavior. Therefore, the Commission proposed to direct NERC to develop new or modified Reliability Standards that require planning coordinators, transmission planners, reliability coordinators, transmission operators, and balancing authorities to validate, coordinate, and keep up to date in a timely manner the verified data and models of registered IBRs, unregistered IBRs, and IBR–DERs in the aggregate by comparing their data and resulting models against actual operational behavior to achieve and maintain necessary modeling accuracy of individual and aggregate (1) registered IBR performance and behaviors and (2) unregistered IBR performance and behaviors, as well as performance and behaviors of IBR–DERs in the aggregate.[292]

a. Comments

159. NERC, CAISO, and AEP support the directives proposed in the NOPR that would require planning coordinators, transmission planners, reliability coordinators, transmission operators, and balancing authorities to coordinate when creating and updating planning, operations, and interconnection-wide models.[293] For example, NERC agrees that there is a need for closer ties and coordination for Reliability Standards MOD–032 and MOD–033 activities to require that the models are tested more regularly and any modifications or updates to these models are provided to the relevant entities responsible for planning and operating the Bulk-Power System.[294] Further, NERC states that Reliability Standards MOD–032 and MOD–033 should be updated to require a more comprehensive practice for system model validation requiring models to be rigorously tested for deficiencies and include minimum requirements for benchmarking events, such as by including a requirement that all plant models be validated through Reliability Standard MOD–033 activities.[295]

160. CAISO supports the NOPR proposal and notes that, while there are technical, administrative, and compliance burdens associated with the imposition of additional new or modified IBR Reliability Standards, this initiative will provide a forum to consider ways to achieve an efficient and effective exchange of information among all relevant NERC-registered entities.[296]

b. Commission Determination

161. Pursuant to section 215(d)(5) of the FPA, we modify the NOPR proposal to provide additional specificity to explain coordination and keep up to date in a timely manner the verified data and models of registered IBRs, unregistered IBRs, and IBR–DERs in the aggregate in the system models.[297] Specifically, we direct NERC to develop new or modified Reliability Standards that require planning coordinators, transmission planners, reliability coordinators, transmission operators, and balancing authorities to establish for each interconnection a uniform framework with modeling criteria, a registered modeling designee, and necessary data exchange requirements both between themselves and with the generator owners, transmission owners, and distribution providers to coordinate the creation of transmission planning, operations, and interconnection-wide models (*i.e.,* system models) and the validation of each respective system model. Further, we direct NERC to include in the new or modified Reliability Standards a requirement for generator owners, transmission owners, and distribution providers to regularly update and communicate the verified data and models of registered IBRs, unregistered IBRs, and IBR–DERs by comparing their resulting models against actual operational behavior to achieve and maintain necessary modeling accuracy for inclusion of these resources in the system models. For those areas with IBR–DERs in the aggregate that have a material impact on the reliable operation of the Bulk-Power System but do not have an associated registered distribution provider, we modify the NOPR proposal to direct NERC to determine the appropriate registered entity responsible for the models of those IBR–DERs and to determine the registered entities responsible for updating, verifying, and coordinating models for IBR–DERs in the aggregate to meet the system models directives. NERC may implement this directive by modifying Reliability Standards MOD–032–1 and MOD–033–2 or by developing new Reliability Standards to establish requirements mandating an annual [298] process to

[289] *See generally* IBR–DER Data Collection Guideline; Aggregate DER Model Verification Guideline.

[290] *See generally* IBR–DER Data Collection Guideline.

[291] *See generally* Aggregate DER Model Verification Guideline.

[292] NOPR, 181 FERC ¶ 61,125 at PP 84–85.

[293] NERC Initial Comments at 14; CAISO Initial Comments at 33; AEP Initial Comments at 1.

[294] NERC Initial Comments at 14.

[295] *Id.* at 14–15.

[296] CAISO Initial Comments at 31–32.

[297] NOPR, 181 FERC ¶ 61,125 at P 85.

[298] *See* Reliability Standard MOD–032–1 at 15 (explaining that ''presently, the Eastern/Quebec and

coordinate, validate, and keep up-to-date the transmission planning, operations, and interconnection-wide models.

D. Planning and Operational Studies

162. In the NOPR, the Commission preliminarily found that the currently effective Reliability Standards do not adequately require planning and operational studies to: (1) assess performance and behavior of both individual and aggregate registered IBRs and unregistered IBRs, as well as IBR–DERs that in the aggregate have a material impact on the Bulk-Power System; (2) have and use validated modeling and operational data for individual registered IBRs and unregistered IBRs, as well as modeling and operational data of IBR–DERs that in the aggregate have a material impact on the Bulk-Power System; and (3) account for the impacts of registered and unregistered IBRs individually and in the aggregate, as well as IBR–DERs that in the aggregate have a material impact on the Bulk-Power System, within and across planning and operational boundaries for normal operations and contingency event conditions. The Commission stated that planning and operational studies must use validated IBR modeling and operational data so that studies account for the actual behavior of both registered and unregistered IBRs individually and in the aggregate, as well as IBR–DERs that in the aggregate have a material impact on the Bulk-Power System.[299]

163. The Commission preliminarily found that the currently effective Reliability Standards do not result in accurate planning studies of Bulk-Power System performance over a broad spectrum of system conditions and following a wide range of probable contingencies that includes all resources.[300] The Commission observed that inaccurate planning assessments may lead to false expectations that system performance requirements are met and may inadvertently mask potential reliability risks in planning and operations.[301] The Commission proposed to direct NERC to submit for approval one or more new or modified Reliability Standards that would require planning coordinators and transmission planners to include in their planning assessments the study and evaluation of performance and behavior of registered and unregistered IBRs individually and in the aggregate, and IBR–DERs in the aggregate, under normal and contingency system conditions in their planning area. The Commission further proposed that the planning assessments include the study and evaluation of the ride through performance (*e.g.,* tripping and momentary cessation conditions) of such IBRs in their planning area for stability studies on a comparable basis to synchronous generation resources.[302]

164. The Commission stated that the proposed new or modified Reliability Standards should also require planning coordinators and transmission planners to consider the behavior of registered and unregistered IBRs individually and in the aggregate, as well as IBR–DERs in the aggregate, using planning models of their area and using interconnection-wide area planning models. Further, the Commission stated that the proposed new or modified Reliability Standards should also require planning coordinators and transmission planners to consider all IBR behaviors in adjacent and other planning areas that adversely impact a planning coordinator's or transmission planner's area during a disturbance event. The Commission explained that this is needed because registered IBRs, unregistered IBRs, and IBR–DERs tend to act in the aggregate over a wide area during such an event.[303]

165. The Commission preliminarily found that the Reliability Standards also do not require that the various operational studies (including operational planning analyses,[304] real-time monitoring, real-time assessments,[305] and other analysis functions) include all resources to adequately assess the performance of the Bulk-Power System for normal and contingency conditions.[306] The Commission proposed to direct NERC to submit to the Commission for approval one or more new or modified Reliability Standards that would require reliability coordinators and transmission operators to include the performance and behavior of registered and unregistered IBRs both individually and in the aggregate, and IBR–DERs in the aggregate, (*e.g.,* IBRs tripping or entering momentary cessation individually or in the aggregate) in their operational planning analysis, real-time monitoring, and real-time assessments, including non-bulk electric system data and external power system network data identified in their data specifications.[307]

166. The Commission further proposed to direct NERC to submit to the Commission for approval one or more new or modified Reliability Standards that would require balancing authorities to include the performance and behavior of registered and unregistered IBRs individually and in the aggregate, as well as IBR–DERs that in the aggregate have a material impact on the Bulk-Power System, (*e.g.,* resources tripping or entering momentary cessation individually or in the aggregate) in their operational analysis functions and real-time monitoring.[308] The Commission explained that this proposal is consistent with the recommendations in the NERC DER Report, IBR Performance Guideline, IBR–DER Data Collection Guideline, and Loss of Solar Resources Alert II. The Commission stated that these reports indicate that a significant number of IBRs that have been involved in system disturbances were not adequately modeled in interconnection-wide models and tools used to study the performance and behavior of registered and unregistered IBRs individually and

Texas Interconnections build seasonal cases on an annual basis, while the Western Interconnection builds cases on a continuous basis throughout the year'').

[299] NOPR, 181 FERC ¶ 61,125 at P 87.

[300] *Id.* P 88.

[301] *See* NERC Glossary at 23 (defining planning assessment as a ''Documented evaluation of future Transmission System performance and Corrective Action Plans to remedy identified deficiencies.'').

[302] NOPR, 181 FERC ¶ 61,125 at P 88.

[303] *Id.* (citing 2021 Solar PV Disturbances Report at v; Odessa 2021 Disturbance Report at v; NERC, *1,200 MW Fault Induced Solar Photovoltaic Resource Interruption Disturbance Report,* 2 (June 2017), *https://www.nerc.com/pa/rrm/ea/1200_MW_Fault_Induced_Solar_Photovoltaic_Resource_/1200_MW_Fault_Induced_Solar_Photovoltaic_Resource_Interruption_Final.pdf* (Blue Cut Fire Event Report) (covering the Blue Cut Fire event (August 16, 2016))); *see also* NOPR, 181 FERC ¶ 61,125 at P 88.

[304] NERC defines operational planning analysis as an ''evaluation of projected system conditions to assess anticipated (pre-Contingency) and potential (post-Contingency) conditions for next-day operations.'' The definition goes on to explain that the evaluation shall reflect ''applicable inputs including, but not limited to, load forecasts; generation output levels; Interchange; known Protection System and Special Protection System status or degradation; Transmission outages; generator outages; Facility Ratings; and identified phase angle and equipment limitations. (Operational Planning Analysis may be provided through internal systems or through third-party services).'' NERC Glossary at 22.

[305] NERC defines real-time assessment as an ''evaluation of system conditions using Real-time data to assess existing (pre-Contingency) and potential (post-Contingency) operating conditions.'' The definition goes on to explain that the assessment shall reflect ''applicable inputs including, but not limited to: load, generation output levels, known Protection System and Special Protection System status or degradation, Transmission outages, generator outages, Interchange, Facility Ratings, and identified phase angle and equipment limitations. (Real-time Assessment may be provided through internal systems or through third-party services).'' *Id.* at 25.

[306] NOPR, 181 FERC ¶ 61,125 at P 89.

[307] *Id.* (citing Reliability Standard IRO–010–4, Requirement R1, pt. 1.1 and Reliability Standard TOP–003–5, Requirement R1, pt. 1.1.).

[308] *Id.* (citing Reliability Standard TOP–003–5, Requirement R2, pt. 2.1.).

in the aggregate, as well as IBR–DERs in the aggregate. Thus, the Commission found that neighboring operators may be unaware that faults in one operator's area can trigger controls actions and trip IBRs in another operator's area.[309]

1. Comments

167. Commenters generally support a directive to require planning authorities to include data within their planning assessments to reflect expected actions of registered and unregistered IBRs individually and in the aggregate, as well as IBR–DERs in the aggregate, under normal and contingency system conditions.[310] NERC also supports the proposed Commission directive to require transmission planners and planning coordinators to coordinate their studies with neighboring entities so that accurate models of registered and unregistered IBRs, as well as IBR–DERs in the aggregate, are represented appropriately for the operating conditions under study.[311]

168. NERC expects that any standard development project to address such a directive would need to include a wider set of operating conditions than simply ''peak'' and ''off-peak'' conditions. NERC explains that using production cost models or other simulation methods to identify operating conditions that could result in extreme stress on the grid could help inform planning assessments.[312]

169. NERC highlights that there may be gaps in the currently effective Reliability Standard TPL–001–5.1 planning assessments if they are performed without accurate IBR models and studies. NERC also points to its Project 2022–02 (Modifications to TPL–001–5.1 and MOD–032–1) as addressing some issues regarding appropriate inclusion of IBRs and DERs (IBR–DERs and synchronous DERs) in planning assessments but notes that additional modifications may be required to adequately address the issues presented in the NOPR. NERC also suggests enhancing the directive by identifying a wider set of operating conditions that would result in the most extreme expected grid stress conditions, both during on-peak load conditions but also off-peak, high renewables conditions (*e.g.,* low inertia).[313]

170. Indicated Trade Associations note that NERC has several ongoing projects to improve the assessments of IBR performance as examples of the ongoing work to address IBR-related reliability concerns that should inform the NERC standard drafting teams that will work to address the directives in the final rule, once issued, including Project 2021–04 (Modifications to Reliability Standard PRC–002) and Project 2022–02 (Modifications to Reliability Standards TPL–001–5.1 and MOD–032–1). Indicated Trade Associations state that Project 2021–04 would modify disturbance monitoring and reporting requirements to better assess resource performance of IBRs during disturbances, and Project 2022–02 is intended to clarify how IBRs are modeled and studied in planning assessments and to include distribution system IBR–DER data and models in steady state and stability contingency analysis.[314]

171. LADWP generally supports including registered and unregistered IBRs in planning assessments, as well as assessments of IBR performance under normal and contingency system conditions, as critical to ensuring the reliable operation of the Bulk-Power System because during disturbance events IBRs tend to act in the aggregate over a widespread area. LADWP also supports including the study and evaluation of ride through performance for stability studies on a comparable basis to synchronous generation resources.[315] LADWP offers that NERC could create a standardized method and criteria for performing additional performance and behavior analysis.[316]

172. IRC supports directives for planning and operational studies, asserting that the current standards do not grant them authority to require relevant entities to provide IBR-related data sufficient for accurate planning or operational studies.[317] SPP encourages the Commission to ensure that registered IBRs provide evidence that they are included in planning coordinator and transmission planner planning assessments.[318]

173. Commenters also support the Commission's proposed directive to require operational authorities to include data within their operational studies to reflect expected actions of registered and unregistered IBRs individually and in the aggregate, as well as IBR–DERs in the aggregate, under normal and contingency system conditions.[319] NERC supports coordinating models used by balancing authorities, transmission operators, and reliability coordinators across their footprints so that faults in one area do not result in unexpected tripping issues in another area.[320]

2. Commission Determination

174. Pursuant to section 215(d)(5) of the FPA, we adopt the NOPR proposal and direct NERC to develop and submit to the Commission for approval new or modified Reliability Standards that require planning coordinators and transmission planners to include in their planning assessments the study and evaluation of performance and behavior of registered and unregistered IBRs individually and in the aggregate, as well as IBR–DERs in the aggregate, under normal and contingency system conditions in their planning area. These Reliability Standards should require planning coordinators and transmission planners to include in their planning assessments the study and evaluation of the ride through performance (*e.g.,* tripping and momentary cessation conditions) of IBRs in their planning area for stability studies on a comparable basis to synchronous generation resources. The new or modified Reliability Standards should also require planning coordinators and transmission planners to study the Bulk-Power System reliability impacts of registered and unregistered IBRs individually and in the aggregate, as well as IBR–DERs in the aggregate, in their planning models of their area and in their interconnection-wide area planning models. Further, the new or modified Reliability Standards should also require planning coordinators and transmission planners to study the Bulk-Power System reliability impacts of registered and unregistered IBRs individually and in the aggregate, as well as IBR–DERs in the aggregate, in adjacent and other planning areas that adversely impacts a planning coordinator's or transmission planner's area during a disturbance event.

175. Regarding NERC's recommendations to clarify the types of steady-state and dynamic grid conditions to include in planning studies, we agree that it is important to ensure performance during periods of grid stress. Accordingly, we direct

[309] *Id.* P 89.

[310] *See, e.g.,* NERC Initial Comments at 18–20; AEP Initial Comments at 3; LADWP Reply Comments at 4; NYSRC Initial Comments at 2; infiniRel Initial Comments at 2; CAISO initial Comments at 36; IRC initial Comments at 4; ISO–NE Initial Comments at 3–4.

[311] NERC Initial Comments at 19.

[312] *Id.* at 18.

[313] *Id.* at 18–19.

[314] Indicated Trade Associations Initial Comments at 7.

[315] LADWP Reply Comments at 4.

[316] *Id.* at 4.

[317] IRC Initial Comments at 5.

[318] SPP Initial Comments at 5.

[319] NERC Initial Comments at 7; AEP Initial Comments at 3; NYSRC Initial Comments at 2; infiniRel Initial Comments at 2; CAISO Initial Comments at 37; IRC Initial Comments at 4; ISO–NE Reply Comments at 3.

[320] NERC Initial Comments at 20.

NERC to consider in its standards development process whether to include in new or modified Reliability Standards a requirement that planning coordinators and transmission planners include a wide set of grid stress performance conditions (*i.e.,* both typical and extreme conditions) in planning assessments.[321] Likewise, with regards to NERC's comments related to on-peak and off-peak studies, we direct NERC to consider in the standards development process whether to require planning coordinators and transmission planners to account in planning assessments for both on-peak and off-peak conditions, normal and abnormal (contingency) conditions with high penetration levels of IBRs (*i.e.,* registered IBRs, unregistered IBRs, and IBR–DERs that in the aggregate have a material impact on the Bulk-Power System), and normal and abnormal conditions with low inertia. While we agree with NERC that the above suggestions have merit, we believe that vetting in the standards development process is preferable to determine whether such provisions are beneficial and the scope and language of such provisions. Accordingly, we simply direct NERC to consider these matters without directing a specific outcome.

176. We adopt the NOPR proposal and direct NERC to submit to the Commission for approval one or more new or modified Reliability Standards that require reliability coordinators and transmission operators to include the performance and behavior of registered and unregistered IBRs individually and in the aggregate, as well as IBR–DERs in the aggregate, (*e.g.,* IBRs tripping or entering momentary cessation individually or in the aggregate) in their operational planning analyses, real-time monitoring, and real-time assessments, including non-bulk electric system data and external power system network data identified in their data specifications.[322] Further, we agree with commenters and direct NERC to submit to the Commission for approval new or modified Reliability Standards requiring reliability coordinators and transmission operators, when performing operational studies, as well as operational planning analyses, real-time monitoring, real-time assessments, and other analyses, to include in these studies all generation resources (*i.e.,* all generation resources including all IBRs) necessary to adequately assess the performance of the Bulk-Power System for normal and contingency conditions.[323]

177. We adopt the NOPR proposal and direct NERC to submit to the Commission for approval one or more new or modified Reliability Standards that require balancing authorities to include the performance and behavior of registered and unregistered IBRs individually and in the aggregate, as well as IBR–DERs that in the aggregate have a material impact on the Bulk-Power System, (*e.g.,* resources tripping or entering momentary cessation individually or in the aggregate) in their operational analysis functions and real-time monitoring to support the reliable operation of the Bulk-Power System during normal and contingency conditions.[324]

E. Performance Requirements

1. Registered IBR Frequency and Voltage Ride Through Requirements

178. In the NOPR, the Commission preliminarily found that the Reliability Standards should require registered IBRs to ride through system disturbances to support essential reliability services.[325] Without the availability of essential reliability services, the Commission explained that the system would experience instability, voltage collapse, or uncontrolled separation. Therefore, the Commission proposed to direct NERC to develop new or modified Reliability Standards that would require registered IBR facilities to ride through system frequency and voltage disturbances where technologically feasible. The Commission stated that ride through performance during system disturbances is necessary for registered IBRs to support essential reliability services.

179. The Commission proposed that the new or modified Reliability Standards should require registered IBRs to continue to produce power and perform frequency support during system disturbances. The Commission proposed to direct NERC to develop new or modified Reliability Standards that would require IBR generator owners and operators to use appropriate settings (*i.e.,* inverter, plant controller, and protection) that: (1) will assure frequency ride through during system disturbances and that would permit IBR tripping only to protect the IBR equipment; and (2) allow for voltage ride through during system disturbances and would permit IBR tripping only when necessary to protect the IBR equipment.[326] In the NOPR, the Commission also explained that any new or modified Reliability Standards should require generator owners of IBR facilities to prohibit momentary cessation in the no-trip zone during disturbances by using appropriate and coordinated protection and controls settings.[327]

180. The Commission proposed to direct NERC to develop new or modified Reliability Standards that clearly address and document the technical capabilities of, and differences between, registered IBRs and synchronous generation resources so that registered IBRs will support these essential reliability services.[328]

a. Comments

181. Commenters generally support the Commission's proposed directives to require IBRs to use appropriate settings that will assure ride through during system disturbances.[329] NERC supports the development of a comprehensive, performance-based ride through standard to assure future grid reliability.[330] Indicated Trade Associations and APS agree that the current Reliability Standards do not have IBR-specific performance requirements necessary to ensure the reliable operation of the Bulk-Power System.[331] IRC asserts that there should be requirements for all IBRs to act to support Bulk-Power System reliability during disturbances.[332] AEU highlights the ability of IBRs to deliver ancillary services such as frequency control.[333] CAISO encourages the Commission to move forward in directing NERC to

[321] NOPR, 181 FERC ¶ 61,125 at P 88 & n.164 (citing several NERC disturbance reports that identifies the potential adverse impact of registered IBRs, unregistered IBRs, and IBR–DERs acting in the aggregate in various system conditions over a wide area).

[322] *See, e.g.,* Reliability Standard IRO–010–4, Requirement R1, pt. 1.1 (stating ''[a] list of data and information needed by the Reliability Coordinator to support its Operational Planning Analyses, Real-time monitoring, and Real-time Assessments. . .'') and Reliability Standard TOP–003–5, Requirement R1, pt. 1.1 (stating ''[a] list of data and information needed by the Transmission Operator to support its Operational Planning Analyses, Real-time monitoring, and Real-time Assessments . . . '').

[323] NOPR, 181 FERC ¶ 61,125 at P 52.

[324] *See, e.g.,* Reliability Standard TOP–003–5, Requirement R2, part 2.1 (stating ''[a] list of data and information needed by the Balancing Authority to support its analysis functions and Real-time monitoring'').

[325] NOPR, 181 FERC ¶ 61,125 at P 90.

[326] *Id.* PP 93–95.

[327] *Id.* P 94.

[328] *Id.* P 90.

[329] NERC, AEU, ACP/SEIA, AEP, CAISO, Indicated Trade Associations, ISO–NE, IRC, NYSRC, Ohio FEA, SCE/PG&E, and SPP all indicated support for Reliability Standards for IBR performance requirements.

[330] NERC Initial Comments at 21.

[331] Indicated Trade Associations Initial Comments at 4–5; APS Initial Comments at 2 (indicating it largely supports Indicated Trade Associations Initial Comments but providing additional comments on specific topics).

[332] IRC Initial Comments at 5.

[333] AEU Initial Comments at 2.

establish a minimum standard to require all IBRs to ride through frequency disturbances [334] and states that, in its experience, modern inverters can meet these standards without substantial costs or hardships.[335]

182. NERC, ACP/SEIA, Indicated Trade Associations, SCE/PG&E, and SPP all point to NERC Project 2020–02 (Modifications to PRC–024 (Generator Ride-through)) as the best means to address ride through performance of IBRs. NERC explains that it has already updated the scope of its existing Project 2020–02 to require ride through performance for all generation resources (not just IBRs).[336] ACP/SEIA, SPP, and Indicated Trade Associations note that this project is addressing performance standards for all resource types, including IBRs.[337] SCE/PG&E explain that Project 2020–02 aims to reduce the type of abnormal performance reliability impacts to the Bulk-Power System that NERC has described in its disturbance reports.[338]

183. ACP/SEIA agree with the Commission's prioritization to require NERC to develop IBR ride through Reliability Standards proposed in the NOPR, although they caution that, depending on local factors, different transmission operators may require different ride through performance of generators.[339] ACP/SEIA recommend that NERC continue with Project 2020–02 to modify Reliability Standard PRC–024–3 so that it becomes a ride through performance standard for both IBR and synchronous resources, which would both save time and provide a technology-neutral solution in addressing the full scope of the ride through risk facing the Bulk-Power System.[340] ACP/SEIA also ask the Commission to clarify in the final rule that the new or modified Reliability Standards on ride through should not require generators to maintain real power output at pre-disturbance levels, noting that it is neither feasible nor desirable for generators to maintain real power output at pre-disturbance levels in many instances. ACP/SEIA suggest that the directive instead require registered IBRs to continue to inject current during system disturbances.[341]

184. EPRI notes that maintaining current at the pre-disturbance level during a disturbance may not be practical, needed, or aligned with IEEE 2800–2022 or other international requirements.[342] EPRI explains that Commission directives to NERC to develop Reliability Standards for IBR ride-through capability and performance requirements could refer to IEEE 2800–2022 standards in accordance with good utility practice as examples of technical minimum requirements.[343]

185. NERC supports the Commission's proposed directive to require frequency and voltage ride through during system disturbances.[344] NERC explains that its updated scope for Project 2020–02 will require ride through performance for all generation resources and will include: (1) no momentary cessation in the no trip zone specified, (2) no tripping on instantaneous frequency and voltage deviations, (3) no tripping due to phase lock loop loss within acceptable bounds, (4) no tripping due to DC bus protection and overcurrent protection, and (5) no tripping for unbalanced faults.[345] AEU states that IBRs are not only capable of delivering voltage regulation but, in some cases, can provide ancillary services ''more quickly and accurately than conventional technologies.'' [346]

186. Indicated Trade Associations point to NERC Project 2021–02 Modifications to VAR–002–4.1 (Generator Operation for Maintaining Network Voltage Schedules) as an existing standards project that is working to modify the currently effective Reliability Standard to specify and ensure the reactive support and voltage control obligations of IBRs in accordance with their capability.[347] ISO–NE notes that if the Commission restricts its directive to only registered IBR generator owners and operators, it will leave out the majority of IBRs within New England.[348]

187. UNIFI notes that newer technologies such as grid-forming IBRs have different behavioral responses to disturbances on the grid and offers an initial set of specifications for grid-forming IBRs that could be used as uniform technical requirements for the interconnection, integration, and interoperability of grid-forming IBRs.[349]

188. ACP/SEIA recommend that the Commission direct NERC to either exempt existing equipment that cannot meet the new or modified Reliability Standards or specify that the new or modified Reliability Standards should require compliance only to the extent it is possible with the equipment's current capabilities. ACP/SEIA suggest that any exemption should cover generators that cannot meet the ride-through requirements with updates to their inverter and control settings, and thus would require replacement of that equipment. ACP/SEIA point to Reliability Standard PRC–024–3 as an example of an exemption that is already included.[350]

189. CAISO recommends that the Commission support NERC in identifying technical changes or equipment modifications that could be made to existing IBRs incapable of disabling momentary cessation, such as eliminating plant-level controller interactions.[351] NYSRC disagrees that there should be an exception for existing IBRs and recommends that the Commission delineate an amount of time for IBR facilities to either demonstrate compliance or institute their own mitigation measures.[352] NYSRC and ISO–NE ask the Commission to clarify that the performance requirements directed as part of the final rule would apply to both new and existing IBRs.[353]

b. Commission Determination

190. Pursuant to section 215(d)(5) of the FPA, we adopt the NOPR proposal and direct NERC to develop new or modified Reliability Standards that require registered IBR generator owners and operators to use appropriate settings (*i.e.,* inverter, plant controller, and protection) to ride through frequency and voltage system disturbances and that permit IBR tripping only to protect the IBR equipment in scenarios similar to when synchronous generation resources use tripping as protection from internal faults. The new or modified Reliability Standards must require registered IBRs to continue to inject current and perform frequency

[334] CAISO Initial Comments at 11.

[335] *Id.* at 7 (citing *Cal. Indep. Sys. Operator Corp.,* 168 FERC ¶ 61,003, at P 18 n.23 (2019) (noting that, based on input from developers and manufacturers of IBRs, ''CAISO believes that the cost of meeting these requirements will be *de minimis*'').

[336] *See, e.g.,* NERC Initial Comments at 22.

[337] ACP/SEIA Initial Comments at 7–8; SPP Initial Comments at 6; Indicated Trade Associations Initial Comments at 8.

[338] SCE/PG&E Initial Comments at 5.

[339] ACP/SEIA Initial Comments at 1–2.

[340] *Id.* at 10–11.

[341] *Id.* at 7.

[342] EPRI Initial Comments at 25.

[343] *Id.* at 5.

[344] NERC Initial Comments at 22.

[345] *Id.*

[346] AEU Initial Comments at 3.

[347] Indicated Trade Associations Initial Comments at 8.

[348] ISO–NE Initial Comments at 5.

[349] UNIFI Initial Comments at 1.

[350] ACP/SEIA Initial Comments at 9. *See also id.* at 8 (Reliability Standard PRC–024–3, Requirement R3 requires generator owners to document each known regulatory or equipment limitation that prevents the resource from meeting protection settings criteria).

[351] CAISO Initial Comments at 17 (quoting 2021 Solar PV Disturbances Report at 14).

[352] NYSRC Initial Comments at 4.

[353] *Id.;* ISO–NE Initial Comments at 6.

support during a Bulk-Power System disturbance. Any new or modified Reliability Standard must also require registered IBR generator owners and operators to prohibit momentary cessation in the no-trip zone during disturbances. NERC must submit new or modified Reliability Standards that establish IBR performance requirements, including requirements addressing frequency and voltage ride through, post-disturbance ramp rates, phase lock loop synchronization, and other known causes of IBR tripping or momentary cessation.[354] This directive is supported by the comments, as well as the recommendations from multiple event reports, including the Blue Cut Fire Event Report,[355] the Odessa 2021 Disturbance Report,[356] and the 2021 Solar PV Disturbances Report.[357] The directive is also consistent with NERC's comments and the March 2023 Alert language.[358] Additionally, in response to requests by ISO–NE and NYSRC for the Commission to clarify that the performance requirements directed as part of the final rule would apply to both new and existing IBRs, we further clarify that all performance requirement directives apply to new and existing registered IBRs.

191. In response to ACP/SEIA's comments, we clarify that we are not directing NERC to modify the currently effective Reliability Standards to require registered IBRs to maintain real power output during system disturbances. Rather, the new or modified Reliability Standards must require registered IBRs to continue to inject current during system disturbances. We note that Order No. 2023 requires non-synchronous resources to ensure that, within any physical limitations of the generating facility, its control and protection settings are configured or set to ''continue active power production during disturbance and post disturbance periods at pre-disturbance levels unless providing primary frequency response or fast frequency response'' [359] The ride through directive in this final action differs from the ride-through requirements established in Order No. 2023 because the Reliability Standards apply more comprehensively and are enforced differently. While ride through requirements set forth in Reliability Standards will apply to both existing IBRs and newly interconnecting IBRs, the ride through requirements of the *pro forma* LGIA and *pro forma* SGIA established in Order No. 2023 apply only to newly interconnecting IBRs. Moreover, any ride through requirements established through the Reliability Standards would be enforceable by NERC, its Registered Entities, and the Commission through the Reliability Standard enforcement process.

192. We believe that, through its standard development process, NERC is best positioned, with input from stakeholders to determine specific IBRs performance requirements during ride through conditions, such as type (*e.g.,* real current and/or reactive current) and magnitude of current. NERC should use its discretion to determine the appropriate technical requirements needed to ensure frequency and voltage ride through by registered IBRs during its standards development process. In response to comments regarding NERC Project 2020–02 Modifications to PRC–024 (Generator Ride-through) and its updated scope to address IBR ride through performance,[360] we discuss this suggestion further in section IV.F, which requires that NERC's informational filing discuss how it is considering standard development projects already underway that may satisfy the directives in this final action.

193. Regarding ACP/SEIA's request for an explicit exemption for existing IBRs with equipment limitations, we agree that a subset of existing registered IBRs—typically older IBR technology with hardware that needs to be physically replaced and whose settings and configurations cannot be modified using software updates—may be unable to implement the voltage ride though performance requirements directed herein. Therefore, we direct NERC through its standard development process to determine whether the new or modified Reliability Standards should provide for a limited and documented exemption for certain registered IBRs from voltage ride through performance requirements. Any such exemption should be only for voltage ride-through performance for those existing IBRs that are unable to modify their coordinated protection and control settings to meet the requirements without physical modification of the IBRs' equipment. Further, we direct NERC to ensure that any such exemption would be applicable for only existing equipment that is unable to meet voltage ride-through performance. When such existing equipment is replaced, the exemption would no longer apply, and the new equipment must comply with the appropriate IBR performance requirements specified in the Reliability Standards (*e.g.,* voltage and frequency ride through, phase lock loop, ramp rates, etc.). The concern that there are existing registered IBRs unable to meet voltage ride through requirements should diminish over time as legacy IBRs are replaced with or upgraded to newer IBR technology that does not require such accommodation.[361] We encourage NERC's standard drafting team to consider currently effective Reliability Standard PRC–024–3, Requirement R3 as an example for establishing registered IBR technology exemptions.[362] Finally, we direct NERC, through its standard development process, to require the limited and documented exemption list (*i.e.,* IBR generator owner and operator exemptions) to be communicated with their respective Bulk-Power System planners and operators (*e.g.,* the IBR generator owner's or operator's planning coordinator, transmission planner, reliability coordinator, transmission operator, and balancing authority). The Bulk-Power System planners and operators' mitigation activity directives are discussed below in section IV.E.2.

194. In response to ISO–NE's concern that applying ride through performance requirements only to registered IBRs means that the requirements would not apply to the vast majority of IBR capacity in New England, the Commission has already directed NERC to register IBRs that materially impact reliability and believes that NERC's workplan approved in the Order Approving Workplan will be a step towards mitigating ISO–NE's concern about unregistered IBRs.[363]

195. Although EPRI asserts that IEEE standards specify technical minimum

[354] *See infra* P 209.

[355] Blue Cut Fire Event Report at 11–13.

[356] Odessa 2021 Disturbance Report at vii, 12–13.

[357] 2021 Solar PV Disturbances Report at vii, 15, 31.

[358] March 2023 Alert at 4–5 (recommending that industry set fault ride through parameters ''to maximize active current delivery during the fault and post-fault periods'' and to ''not artificially limit dynamic reactive power capability delivered to the point of interconnection during normal operations and [Bulk-Power System] disturbances.'').

[359] Order No. 2023, 184 FERC ¶ 61,054 at P 1715.

[360] *See, e.g.,* NERC Initial Comments at 22; Indicated Trades Associations Initial Comments at 8.

[361] *See generally* 2021 Solar PV Disturbances Report at 14 (discussing momentary cessation from legacy facilities that cannot eliminate its use).

[362] Reliability Standard PRC–024–3, Requirement R3 (explaining that ''each Generator Owner shall document each known regulatory or equipment limitation that prevents an applicable generating resource(s) with frequency or voltage protection from meeting the protection setting criteria in Requirements R1 or R2, including (but not limited to) study results, experience from an actual event, or manufacturer's advice.'').

[363] *See* Order Approving Workplan, 183 FERC ¶ 61,116 at P 32 (explaining that NERC asserts that its work plan would result in approximately 98 percent of Bulk-Power System-connected IBRs being subject to applicable Reliability Standards).

capability and performance requirements that could be referenced as examples of good utility practice,[364] NERC's comments indicate that currently effective Reliability Standard PRC–024–3, as well as the re-scoped Project 2020–02 (Modifications to PRC–024 (Generator Ride-through)), differ from IEEE standards in that both the currently effective Reliability Standard and re-scoped PRC–024 project disallow momentary cessation within the no trip zone, while IEEE–2800–2022 would allow momentary cessation under certain conditions.[365] As the record in this proceeding provides no basis to conclude that the performance requirements of IEEE 2800–2022 are preferable to NERC's or would adequately address the reliability concerns discussed in this final action, we decline to direct NERC to specifically reference IEEE standards in its new or modified Reliability Standards. Rather, NERC has the discretion to consider during its standards development process whether and how to reference IEEE standards in the new or modified Reliability Standards.

2. Bulk-Power System Planners and Operators Voltage Ride Through Mitigation Activities

196. In the NOPR, the Commission acknowledged that some registered generator owners and operators of IBRs currently in operation may be unable to prohibit momentary cessation in the no-trip zone during disturbances by using appropriate and coordinated protection and controls settings.[366] For such scenarios, the Commission proposed to direct NERC to require Bulk-Power System planners and operators to implement mitigation activities that may be needed to address any reliability impact to the Bulk-Power System posed by these existing facilities.[367]

a. Comments

197. NYSRC raises concerns with the Commission's proposal because allowing an exception for legacy registered IBRs would mean that transmission owners and operators would be responsible for mitigating an event consisting of an unknown number of IBRs disconnecting from the system at any time in the future, in an unanticipated manner.[368] NYSRC asserts that requiring transmission planners and operators to ensure there are mitigation strategies for scenarios where existing IBRs are unable to meet performance requirements would be infeasible, as they would need to plan for and address an event consisting of an unknown number of IBRs disconnecting at any time.[369]

198. Indicated Trade Associations disagree with the Commission's proposal to require transmission planners and operators to mitigate instances in which IBRs are incapable of prohibiting momentary cessation in the no-trip zone during disturbances, asserting that such a requirement should be solely the responsibility of registered generator owners.[370] Indicated Trade Associations also ask the Commission to clarify what it means by an ''operator'' being responsible for mitigating events.

b. Commission Determination

199. Pursuant to section 215(d)(5) of the FPA, we modify the NOPR proposal. To the extent NERC determines that a limited and documented exemption for those registered IBRs currently in operation and unable to meet voltage ride-through requirements is appropriate due to their inability to modify their coordinated protection and control settings,[371] we direct NERC to develop new or modified Reliability Standards to mitigate the reliability impacts to the Bulk-Power System of such an exemption. As NERC will consider the reliability impacts to the Bulk-Power System caused by an such exemption, we believe that the concerns raised by NYSRC and Indicated Trade Associations on the appropriate registered entity responsible for implementing the mitigation activities, and the nature of such mitigation, should be addressed in the NERC standards development process.

3. Post-Disturbance IBR Ramp Rate Interactions and Phase Lock Loop Synchronization

200. In the NOPR, the Commission proposed to direct NERC to develop new or modified Reliability Standards to address other registered IBR performance and operational characteristics that can affect the reliable operation of the Bulk-Power System, namely, ramp rate interactions and phase lock loop synchronization.[372] The Commission stated that the proposed directives would improve the reliable operation of the Bulk-Power System by helping to avoid instability, voltage collapse, uncontrolled separation, or islanding.[373]

201. The Commission proposed to direct NERC to ensure that post-disturbance ramp rates for registered IBRs are not restricted or do not artificially interfere with the IBR returning to a pre-disturbance output level in a quick and stable manner after a Bulk-Power System fault event.[374] Furthermore, the Commission proposed to direct NERC to require that IBRs ride through any conditions not addressed by the proposed new or modified Reliability Standards covering frequency or voltage ride through, including phase lock loop loss of synchronism.[375]

202. Further, the Commission proposed to direct that the Reliability Standards obligate generator owners to communicate to the relevant planning coordinators, transmission planners, reliability coordinators, transmission operators, and balancing authorities the actual post-disturbance ramp rates and the ramp rates set to meet expected dispatch levels (*i.e.,* generation-load balance). The Commission explained that the proposed new or modified Reliability Standards should account for the technical differences between IBRs and synchronous generation resources, such as IBRs' faster control capability to

[364] *See, e.g.,* EPRI Initial Comments at 5; *see also id.* at 8 (proposing generally that the Reliability Standards should consider using the precise language and definitions as published in the industry standards and aligning requirements with leading international practice and grid codes).

[365] *See* NERC Initial Comments at 22 n.39 (explaining that ''[a] notable caveat is that IEEE 2800 allows momentary cessation (referred to as current blocking) at very low voltages (*i.e.,* <0.1 pu voltage). This nuance could be addressed by the standard drafting team and should be considered by regulatory bodies to ensure alignment.'').

[366] *See, e.g.,* 2021 Solar PV Disturbances Report at 14 (discussing technical limitations of legacy IBRs related to voltage control and momentary cessation).

[367] NOPR, 181 FERC ¶ 61,125 at PP 94–95.

[368] NYSRC Initial Comments at 4.

[369] *Id.*

[370] Indicated Trade Associations Initial Comments at 8.

[371] *See supra* section IV.E.1.

[372] NOPR, 181 FERC ¶ 61,125 at P 91.

[373] *Id.* P 92.

[374] *Id.* P 96. *See* Canyon 2 Fire Event Report at 11 (stating that ''[e]xisting inverters where momentary cessation cannot be effectively eliminated should not be impeded from restoring current injection following momentary cessation. Active current injection should not be restricted by a plant-level controller or other slow ramp rate limits. Resources with this interaction should remediate the issue in close coordination with their [balancing authority] and inverter manufacturers to ensure that ramp rates are still enabled appropriately to control gen-load balance but not applied to restoring output following momentary cessation.'').

[375] *Id.* P 97. *See* Canyon 2 Fire Event Report at vi (explaining that inverters should ride through momentary loss of synchronism during Bulk-Power System events, such as faults. Inverters riding through these disturbances should ''continue to inject current into the grid and, at a minimum, lock the [phase lock loop] to the last synchronized point and continue injecting current to the [Bulk-Power System] at that calculated phase until the [phase lock loop] can regain synchronism upon fault clearing'').

ramp power output down or up when capacity is available.[376]

203. The Commission also explained that the currently effective Reliability Standards do not require that all generation resources maintain voltage phase angle synchronization with the Bulk-Power System grid voltage during a system disturbance.[377] The Commission proposed that any new or modified Reliability Standards should require IBRs to ride through momentary loss of synchronism during Bulk-Power System disturbances and require IBRs to continue to inject current into the Bulk-Power System at pre-disturbance levels during a disturbance.[378]

a. Comments

204. NERC, AEP, CAISO, IRC, and NYSRC support the proposed directive to address post-disturbance IBR ramp rate interactions and phase lock loop synchronization.[379] NERC explains that it is considering requirements amending the project scope for Project 2020–02 Modifications to PRC–024 (Generator Ride-through) to include consideration of post-fault recovery times, ramp rate interactions, or the injection of certain levels of currents (and powers) during grid disturbances, and to include requirements that disallow phase lock loop loss of synchronism and other phase angle-based tripping within acceptable bounds.[380]

205. ACP/SEIA do not believe that IBRs can inject current accurately when synchronism is lost and assert that in those cases IBRs would blindly provide pre-fault current, which would not be desirable for grid stability.[381] ACP/SEIA recommend revising the language of the directive to require generators to maintain synchronism where possible and continue to inject current to support system stability.[382]

206. Although SPP agrees with proposed directives related to ramp rate interactions and phase lock loop synchronization, SPP requests that the Commission include in the final rule a consideration of the IEEE 2800–2022 standard. SPP recommends that the Commission direct an analysis of the interrelationship or overlap between the IEEE standards and any new or modified Reliability Standards.[383]

207. EPRI suggests that the Commission direct NERC to develop new or modified Reliability Standards using comprehensive and holistic ride through capability and performance requirements instead of explicitly mentioning causes of trip (*i.e.,* loss of phase lock loop synchronism in this case) or causes of slow recovery (*i.e.,* slow ramp rate), which may leave out other causes.[384]

b. Commission Determination

208. Pursuant to section 215(d)(5) of the FPA, we adopt the NOPR proposal and direct NERC to develop and submit to the Commission for approval new or modified Reliability Standards that require post-disturbance ramp rates for registered IBRs to be unrestricted and not programmed to artificially interfere with the resource returning to a pre-disturbance output level in a quick and stable manner after a Bulk-Power System disturbance event. The proposed Reliability Standards must account for the technical differences between registered IBRs and synchronous generation resources, such as registered IBRs' faster control capability to ramp power output down or up when capacity is available.[385] Further, the Reliability Standards must require generator owners to communicate to the relevant planning coordinators, transmission planners, reliability coordinators, transmission operators, and balancing authorities the actual post-disturbance ramp rates and the ramp rates to meet expected dispatch levels (*i.e.,* generation-load balance).

209. We direct NERC to submit to the Commission for approval new or modified Reliability Standards that would require registered IBRs to ride through any conditions not addressed by the proposed new or modified Reliability Standards that address frequency or voltage ride through, including phase lock loop loss of synchronism. The proposed new or modified Reliability Standards must require registered IBRs to ride through momentary loss of synchronism during Bulk-Power System disturbances and require registered IBRs to continue to inject current into the Bulk-Power System at pre-disturbance levels during a disturbance, consistent with the IBR Interconnection Requirements Guideline and Canyon 2 Fire Event Report recommendations.[386] Related to ACP/SEIA's comment recommending to revise the directive to require generators to maintain synchronism where possible and continue to inject current to support system stability, we direct NERC, through its standard development process, to consider whether there are conditions that may limit generators to maintain synchronism.

210. Regarding NERC's comment informing that NERC is considering whether to amend the Project 2020–02 Modifications to PRC–024 (Generator Ride-through) scope, while NERC did not request any particular Commission action, we support such project modification as consistent with our above directive that registered IBRs ride through any conditions, including phase lock loop loss of synchronism. Similarly, we believe that EPRI's suggestion to use comprehensive and holistic ride through capability and performance requirements instead of a piecemeal approach to addressing performance concerns that may exclude other ride through capability and performance requirements aligns with our above directive.

211. Related to SPP's comment to include in the final rule consideration of IEEE 2800–2022 to address ramp rate interactions and phase lock loop synchronization of registered IBRs, we decline to direct NERC to specifically reference IEEE standards in its new or modified Reliability Standards for similar reasons as discussed above in section IV.E.1. Rather, NERC has the discretion to consider during its standards development process whether and how to reference IEEE standards in the new or modified Reliability Standards. As discussed in section IV.F below, NERC's informational filing should discuss how it is considering standard development projects already underway to meet the directives in this final action.

F. Informational Filing and Reliability Standard Development Timeline

212. In the NOPR, the Commission proposed to direct NERC to submit a compliance filing within 90 days of the effective date of the final rule in this proceeding. The proposed compliance filing would include a detailed, comprehensive standards development and implementation plan explaining how NERC will prioritize the development and implementation of

[376] NOPR, 181 FERC ¶ 61,125 at P 96.

[377] *Id.* P 97.

[378] *Id.*

[379] NERC Initial Comments at 5; AEP Initial Comments at 5; CAISO Initial Comments at 1; IRC Initial Comments at 5; NYSRC Initial Comments at 1.

[380] NERC Initial Comments at 22.

[381] ACP/SEIA Initial Comments at 8.

[382] *Id.*

[383] SPP Initial Comments at 4.

[384] EPRI Initial Comments at 25.

[385] NOPR, 181 FERC ¶ 61,125 at P 96.

[386] *Id.* P 97; *see also* Canyon 2 Fire Event Report at 20 (recommending that ''[i]nverters should not trip for momentary [phase lock loop] loss of synchronism caused by phase jumps, distortion, etc., during [Bulk-Power System] grid events (*e.g.,* faults). Inverters should continue to inject current into the grid and, at a minimum, lock the [phase lock loop] to the last synchronized point and continue injecting current to the [Bulk-Power System] at that calculated phase until the [phase lock loop] can regain synchronism upon fault clearing.'').

new or modified Reliability Standards. The Commission proposed requiring NERC to explain in its compliance filing how it is prioritizing its IBR Reliability Standard projects to meet the directives in the final rule, taking into account the risks posed to the reliability of the Bulk-Power System, standard development projects already underway, resource constraints, and other factors as necessary.[387]

213. The Commission proposed to direct NERC to use a staggered approach that would result in NERC submitting new or modified Reliability Standards in three stages: (1) new or modified Reliability Standards including directives related to registered IBR failures to ride through frequency and voltage variations during normally cleared Bulk-Power System faults filed with the Commission within 12 months of Commission approval of the plan; (2) new or modified Reliability Standards addressing the interconnected directives related to registered IBR, unregistered IBR, and IBR–DER data sharing; registered IBR disturbance monitoring data sharing; registered IBR, unregistered IBR, and IBR–DER data and model validation; and registered IBR, unregistered IBR, and IBR–DER planning and operational studies filed with the Commission within 24 months of Commission approval of the plan; and (3) new or modified Reliability Standards including the remaining directives for post-disturbance ramp rates and phase lock loop synchronization filed with the Commission within 36 months of Commission approval of the plan.[388]

1. Comments

214. NERC supports a directive to require a compliance filing within 90 days.[389] NERC generally supports the Commission's proposal for a compliance filing, including a standards development plan.[390] Nevertheless, NERC seeks clarification of the Commission's use of ''implementation plan'' and whether that phrase refers to the timeline for developing responsive new or modified Reliability Standards or the timeline for entity implementation of the approved new or modified Reliability Standards. NERC cautions that if implementation plan means ''the time for an entity to implement a new or revised Reliability Standard,'' then it would be unable to provide meaningful information for Reliability Standards still in development because reasonable implementation periods are still under consideration through NERC's Commission-approved Reliability Standard development process.[391]

215. Indicated Trade Associations suggest directing NERC to include in its work plan a comparison to its ongoing IBR-related standards projects' scopes and how each relates to the directives in the final rule.[392] Indicated Trade Associations caution against losing the work already completed.[393] Indicated Trade Associations and IRC point to existing NERC projects addressing reliability gaps pertaining to IBR data sharing that could be leveraged to address the proposed directives, including Project 2020–06 (Verifications of Models and Data for Generators), Project 2022–02 (Modifications to Reliability Standards TPL–001–5.1 and MOD–032–1), and Project 2021–04 (Modifications to Reliability Standard PRC–002–2).[394]

216. SCE/PG&E, while broadly supportive of the Commission's goals, recommend initiating a pilot program as a first step before progressing to directives for new or modified Reliability Standards. SCE/PG&E recommend that the pilot program should study: (1) changes by the CAISO to address IBRs and consider whether they translate to national standards; (2) interconnection tariff revisions under review at the California Public Utilities Commission under California Electric Rule 21; and (3) systems with high-IBR penetrations and what information is available to distribution providers, generator owners, generator operators, transmission owners, and transmission operators within these footprints.[395] SCE/PG&E assert that NERC could take advantage of ongoing state actions to ensure reliable operation and to coordinate with the states so there are no conflicting obligations.[396]

217. NERC, AEP, Bonneville, CAISO, and Ohio FEA generally support the idea of a staggered standard development plan but provide some recommendations to adjust the schedule to take advantage of NERC's ongoing standard development projects. NERC proposes an alternate timeline whereby it would submit proposed new or modified Reliability Standards addressing: (1) comprehensive ride through requirements (including frequency, voltage, post-disturbance ramp rates, and phase lock loop synchronization), post-event performance validation, and disturbance monitoring data within 12 months of Commission approval of the plan; (2) data sharing issues, other than disturbance monitoring data, and data and model validation for registered and unregistered IBRs and IBR–DERs in the aggregate within 24 months of Commission approval of the plan; and (3) planning and operational studies for registered and unregistered IBRs and IBR–DERs in the aggregate within 36 months of Commission approval of the plan.[397] NERC explains that its alternate timeline would leverage existing and planned activities more efficiently and address higher priority risks more expeditiously, while allowing sufficient time to develop consensus approaches on other issues.[398]

218. AEP and CAISO support the Commission's proposed staggered approach but suggest modifying the proposal to include all aspects of ride through performance (*i.e.,* phase lock loop synchronization and post-disturbance ramp rates) in the first stage.[399] Further, as NERC is working on addressing currently unregistered IBR generator owners and operators, AEP recommends addressing the interconnected issues related to registered and unregistered IBR and IBR–DER data sharing, validation, and studies after the remaining directives in the three-year time frame.[400]

219. Bonneville believes that the three-year proposed timeline should be extended to five years.[401] Bonneville explains that the proposed directives for data sharing, model validation, and studies will ''require extensive industry collaboration'' and that a five-year timeline will ensure that NERC and industry have adequate time to develop the standards, especially as Bonneville notes there will be an increase in generation interconnection requests and corresponding need for additional model validation.[402]

220. Ohio FEA anticipates that using a staggered standards development timeline will provide additional opportunities for stakeholders to participate in the development of the new or modified Reliability Standards and recommends robust comment

[387] *Id.* P 72.

[388] *Id.* P 73.

[389] NERC Initial Comments at 23.

[390] *Id.*

[391] *Id.* at 23–24.

[392] Indicated Trade Associations Initial Comments at 2.

[393] *Id.* at 5.

[394] *Id.* at 6; IRC Initial Comments at 3.

[395] SCE/PG&E Initial Comments at 9–11.

[396] *Id.* at 10.

[397] NERC Initial Comments at 26–30.

[398] *Id.* at 24.

[399] AEP Initial Comments at 5; CAISO Initial Comments at 5.

[400] AEP Initial Comments at 6.

[401] Bonneville Initial Comments at 1.

[402] *Id.* at 3.

periods at each stage in the staggered approach.[403]

221. ACP/SEIA caution that, although supportive of ride through requirements, one year to develop such standards is a short time when compared with how long it typically takes to develop Reliability Standards and may be infeasible if NERC does not use its existing standards development projects to comply with the rule.[404]

2. Commission Determination

222. Pursuant to § 39.2(d) of the Commission's regulations,[405] we modify the NOPR proposal and direct NERC to submit an informational filing within 90 days of the issuance of the final rule in this proceeding. Further, pursuant to section 215(d)(5)(g) of the FPA, we direct NERC to submit new or modified Reliability Standards addressing the reliability concerns outlined herein by certain deadlines, detailed further below.

223. NERC's informational filing should include a detailed, comprehensive standards development plan and explanation of how NERC will prioritize the development of new or modified Reliability Standards directed in this rule. We agree with NERC and Indicated Trade Associations, among others, that there are existing projects that can be leveraged to address our directives in a timely manner.[406] Therefore, NERC should take into account the risk posed to the reliability of the Bulk-Power System, standard development projects already underway, resource constraints, its ongoing registration of Bulk-Power System-connected IBR generator owners and operators, and other factors as necessary.[407] As we recognized in the NOPR, data models and validation build and rely upon the data sharing directives. Similarly, the planning and operational study directives require the use of validated models and data sharing.[408]

224. In its comments, NERC provides an alternate timeline it explains would leverage its existing and planned activities more efficiently. It references initiatives already underway and highlights several ongoing standards development projects that could be adjusted to address the directives in this final action.[409] As NERC explains in its comments, a standards development plan provides visibility to both the Commission and stakeholders on how NERC will address the important reliability issues identified in this final action. In the interest of time, however, and as NERC appears to have already extended considerable effort in thinking through how it would address IBR-related gaps through its Reliability Standard projects, we do not find it necessary to approve NERC's final work plan.

225. As requested by NERC, we clarify that the Commission's reference to ''implementation'' in the NOPR means the date on which the new or modified Reliability Standards would become mandatory and enforceable for relevant registered entities. But we find persuasive NERC's assertion that that the implementation plan is better developed standard-by-standard through NERC's Commission approved Reliability Standard development process. Therefore, we decline to direct NERC to include in its informational filing the dates by which all of the new or modified Reliability Standards would be mandatory and effective.

226. Although we are not directing NERC to include implementation dates in its informational filing and are leaving determination of the proposed effective dates to the standards development process, we are concerned that the lack of a time limit for implementation could allow identified issues to remain unresolved for a significant and indefinite period. Therefore, we emphasize that industry has been aware of and alerted to the need to address the impacts of IBRs on the Bulk-Power System since at least 2016. The number of events, NERC Alerts, reports, whitepapers, guidelines, and ongoing standards projects more than demonstrate the need for the expeditious implementation of new or modified Reliability Standards addressing IBR data sharing, data and model validation, planning and operational studies, and performance requirements. Thus, in that light, the Commission will consider the justness and reasonableness of each new or modified Reliability Standard's implementation plan when it is submitted for Commission approval.[410] Further, we believe that there is a need to have all of the directed Reliability Standards effective and enforceable well in advance of 2030 and direct NERC to ensure that the associated implementation plans sequentially stagger the effective and enforceable dates to ensure an orderly industry transition for complying with the IBR directives in this final action prior to that date.

227. We decline to direct NERC to implement a pilot program to better analyze the impact of IBRs on the Bulk-Power System as requested by SCE/PG&E. While there may be merit in conducting a pilot program for systems with high-IBR penetrations to better understand what information is available to distribution providers, generator owners, generator operators, transmission owners, and transmission operators within these footprints, we leave to NERC's discretion the value of such a study; and in any case such a pilot program must not impact the prioritization or timely completion of the directed Reliability Standards.

228. We agree with NERC, CAISO, and AEP that the stages should be modified from the NOPR proposal to group the ride through directives and the development of new or modified Reliability Standards for data sharing and model validation to inform the standard development for planning and operational studies.

229. Therefore, as we are persuaded by commenters' suggestions regarding the proposed staggered groupings for new or modified Reliability Standards, we modify the NOPR proposal to adopt NERC's proposed staggered grouping that would result in NERC submitting new or modified Reliability Standards in three stages. NERC's standards development plan submitted as a part of its informational filing must ensure that NERC submits new or modified Reliability Standards by the following deadlines. First, by November 4, 2024, NERC must submit new or modified Reliability Standards that establish IBR performance requirements, including requirements addressing frequency and voltage ride through, post-disturbance ramp rates, phase lock loop synchronization, and other known causes of IBR tripping or momentary cessation (section IV.E.). NERC must also submit, by November 4, 2024, new or modified Reliability Standards that require disturbance monitoring data sharing and post-event performance validation for registered IBRs (section IV.B.2.). Second, by November 4, 2025,

[403] Ohio FEA Initial Comments at 7.

[404] ACP/SEIA Initial Comments at 4.

[405] 18 CFR 39.2(d).

[406] *See, e.g.,* NERC Initial Comments at 22; Indicated Trades Associations Initial Comments at 8 (discussing NERC Project 2020–02 Modifications to PRC–024 (Generator Ride-through) and its updated scope to address IBR ride through performance).

[407] *See* IBR Registration Order, 181 FERC ¶ 61,124.

[408] NOPR, 181 FERC ¶ 61,125 at P 74.

[409] NERC Initial Comments at 21–22.

[410] *See* Order No. 672, 114 FERC ¶ 61,104 at P 333 (''In considering whether a proposed Reliability Standard is just and reasonable, the Commission will consider also the timetable for implementation of the new requirements, including how the proposal balances any urgency in the need to implement it against the reasonableness of the time allowed for those who must comply.'').

NERC must submit new or modified Reliability Standards addressing the interrelated directives concerning: (1) data sharing for registered IBRs (section IV.B.1), unregistered IBRs (section IV.B.3.), and IBR–DERs in the aggregate (section IV.B.3.); and (2) data and model validation for registered IBRs, unregistered IBRs, and IBR–DERs in the aggregate (section IV.C.). Finally, by November 4, 2026, NERC must submit new or modified Reliability Standards addressing planning and operational studies for registered IBRs, unregistered IBRs, and IBR–DERs in the aggregate (section IV.D.). We continue to believe this staggered approach to standard development is necessary based on the scope of work anticipated and that specific target dates will provide a valuable tool and incentive to NERC to timely address the directives in this final action.

230. NERC may expedite its standards development plan and submit new or modified Reliability Standards prior to the deadlines. We decline to extend the three-year staggered approach to a five-year staggered approach as requested by Bonneville due to the pressing nature of the Commission's concerns discussed above, such as IBR momentary cessation occurring in the aggregate today that can lead to instability, system-wide uncontrolled separation, and voltage collapse.

V. Information Collection Statement

231. The information collection requirements contained in this order are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[411] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[412] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to this collection of information unless the collection of information displays a valid OMB control number. Comments are solicited on the Commission's need for the information proposed to be reported, whether the information will have practical utility, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques.

232. The directives to NERC to submit new or modified Reliability Standards that address specific matters pertaining to the impacts of IBRs on the reliable operation of the Bulk-Power System are covered by, and already included in, the existing OMB-approved information collection FERC–725 (Certification of Electric Reliability Organization; Procedures for Electric Reliability Standards; OMB Control No. 1902–0225), under Reliability Standards Development.[413] In this final action, we direct NERC to develop new or modify the currently effective Reliability Standards to address these issues and, when these Reliability Standards are submitted to the Commission for approval, to explain in the accompanying petition how the issues are addressed in the proposed new or modified Reliability Standards. NERC may propose to develop new or modified Reliability Standards that address our concerns in an equally efficient and effective manner; however, NERC's proposal should explain how the new or modified Reliability Standards address the Commission's concerns discussed in this final action.

233. Necessity of Information. Direct NERC to develop new or modified Reliability Standards addressing reliability gaps pertaining to IBRs in four areas: (1) data sharing; (2) model validation; (3) planning and operational studies; and (4) performance requirements.

VI. Environmental Analysis

234. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[414] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[415] The actions directed herein fall within this categorical exclusion in the Commission's regulations.

VII. Regulatory Flexibility Act

235. The Regulatory Flexibility Act of 1980 (RFA)[416] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. This final action directs NERC, the Commission-certified ERO, to develop new or modified Reliability Standards for IBRs on the Bulk-Power System. Therefore, this final action will not have a significant or substantial impact on entities other than NERC.[417] Consequently, the Commission certifies that this final action will not have a significant economic impact on a substantial number of small entities.

236. Any new or modified Reliability Standards proposed by NERC in compliance with this rulemaking will be considered by the Commission in future proceedings. As part of any future proceedings, the Commission will make determinations pertaining to the RFA based on the content of the Reliability Standards proposed by NERC.

VIII. Document Availability

237. 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*).

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

239. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

[411] 44 U.S.C. 3507(d).

[412] 5 CFR 1320.11.

[413] Reliability Standards Development as described in FERC–725 covers standards development initiated by NERC, the Regional Entities, and industry, as well as Reliability Standards the Commission may direct NERC to develop or modify. The information collection associated with this final action ordinarily would be a non-material addition to FERC–725. However, an information collection request unrelated to this final action is pending review under FERC–725 at the Office of Management and Budget. To submit this final action timely to OMB, we will submit this to OMB as a temporary placeholder under FERC–725(1A), OMB Control No. 1902–0289.

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

[415] 18 CFR 380.4(a)(2)(ii).

[416] 5 U.S.C. 601–612.

[417] *See, e.g., Transmission Sys. Plan. Performance Requirements for Extreme Weather,* Order No. 896, 88 FR 41262 (June 23, 2023), 183 FERC ¶ 61,191, at P 198 (2023).

IX. Effective Date and Congressional Notification

240. This final action is effective December 29, 2023. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

By the Commission. Commissioner Danly is concurring with a separate statement attached.

Issued October 19, 2023

Kimberly D. Bose,

Secretary.

Appendix A: Commenter Names

Acronyms	Commenter name
AEU	Advanced Energy United.
ACP/SEIA	American Clean Power Association and Solar Energy Industries Association.
AEP	American Electric Power Service Corporation.
APS	Arizona Public Service Company.
Bonneville	Bonneville Power Administration.
CAISO	California Independent System Operator Corporation.
EPRI	Electric Power Research Institute.
Indicated Trade Associations	Edison Electric Institute, American Public Power Association, Large Public Power Council, National Rural Electric Cooperative Association, and Transmission Access Policy Study Group.
infiniRel	infiniRel Corporation.
ISO–NE	ISO New England Inc.
IRC	ISO/RTO Council.
NYSRC	New York State Reliability Council.
LADWP	Los Angeles Department of Water and Power.
Ohio FEA	Public Utilities Commission of Ohio's Office of the Federal Energy Advocate.
Mr. Plankey	Sean P. Plankey.
SCE/PG&E	Southern California Edison Company and Pacific Gas and Electric Company.
SPP	Southwest Power Pool, Inc.
UNIFI	Universal Interoperability for Grid-forming Inverters Consortium.

Appendix B: NERC IBR Resources Cited in the Final Action

NERC Guidelines

NERC Guidelines referenced in this NOPR are available here: *https://www.nerc.com/comm/Pages/Reliability-and-Security-Guidelines.aspx.*

NERC, *Reliability Guideline: Modeling Distributed Energy Resources in Dynamic Load Models* (Dec. 2016), *https://www.nerc.com/comm/RSTC_Reliability_Guidelines/Reliability_Guideline_-_Modeling_DER_in_Dynamic_Load_Models_-_FINAL.pdf* (retired).

NERC, *Reliability Guideline: Distributed Energy Resources Modeling,* (Sept. 2017), *https://www.nerc.com/comm/RSTC_Reliability_Guidelines/Reliability_Guideline_-_DER_Modeling_Parameters_-_2017-08-18_-_FINAL.pdf* (retired).

NERC, *Reliability Guideline: BPS-Connected Inverter-Based Resource Performance* (Sept. 2018), *https://www.nerc.com/comm/RSTC_Reliability_Guidelines/Inverter-Based_Resource_Performance_Guideline.pdf* (IBR Performance Guideline).

NERC, *Reliability Guideline: Parameterization of the DER_A Model* (Sept. 2019), *https://www.nerc.com/comm/RSTC_Reliability_Guidelines/Reliability_Guideline_DER_A_Parameterization.pdf* (2019 DER_A Model Guideline) (retired).

NERC, *Reliability Guideline: DER Data Collection for Modeling in Transmission Planning Studies* (Sept. 2020), *https://www.nerc.com/comm/RSTC_Reliability_Guidelines/Reliability_Guideline_DER_Data_Collection_for_Modeling.pdf* (IBR–DER Data Collection Guideline).

NERC, *Reliability Guideline: Model Verification of Aggregate DER Models used in Planning Studies* (Mar. 2021), *https://www.nerc.com/comm/RSTC_Reliability_Guidelines/Reliability_Guideline%20_DER_Model_Verification_of_Aggregate_DER_Models_used_in_Planning_Studies.pdf* (Aggregate DER Model Verification Guideline).

NERC, *Reliability Guideline: Parameterization of the DER_A Model for Aggregate DER* (Feb. 2023), *https://www.nerc.com/comm/RSTC_Reliability_Guidelines/Reliability_Guideline_ModelingMerge_Responses_clean.pdf* (2023 DER_A Model Guideline).

NERC, *Reliability Guideline: Electromagnetic Transient Modeling for BPS-Connected Inverter-Based Resources—Recommended Model Requirements and Verification Practices* (Mar. 2023), *https://www.nerc.com/comm/RSTC_Reliability_Guidelines/Reliability_Guideline-EMT_Modeling_and_Simulations.pdf.*

NERC White Papers

IRPTF white papers referenced in this NOPR are available here: *https://nerc.com/comm/PC/Pages/Inverter-Based-Resource-Performance-Task-Force.aspx.*

NERC, *A Concept Paper on Essential Reliability Services that Characterizes Bulk Power System Reliability* (Oct. 2014), *https://www.nerc.com/comm/Other/essntlrlbltysrvcstskfrcDL/ERSTF%20Concept%20Paper.pdf* (Essential Reliability Services Concept Paper).

NERC, *Resource Loss Protection Criteria Assessment* (Feb. 2018), *https://www.nerc.com/comm/PC/InverterBased%20Resource%20Performance%20Task%20Force%20IRPT/IRPTF_RLPC_Assessment.pdf.*

NERC, *Fast Frequency Response Concepts and Bulk Power System Reliability Needs* (Mar. 2020), *https://www.nerc.com/comm/PC/InverterBased%20Resource%20Performance%20Task%20Force%20IRPT/Fast_Frequency_Response_Concepts_and_BPS_Reliability_Needs_White_Paper.pdf* (Fast Frequency Response White Paper).

NERC Reports

NERC, *2013 Long-Term Reliability Assessment* (Dec. 2013), *https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/2013_LTRA_FINAL.pdf* (2013 LTRA Report).

NERC, *Distributed Energy Resources: Connection Modeling and Reliability Considerations* (Feb. 2017), *https://www.nerc.com/comm/Other/essntlrlbltysrvcstskfrcDL/Distributed_Energy_Resources_Report.pdf* (NERC DER Report).

NERC, *2020 Long Term Reliability Assessment Report* (Dec. 2020), *https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_LTRA_2020.pdf* (2020 LTRA Report).

NERC, *2021 Long Term Reliability Assessment Report* (Dec. 2021), *https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_LTRA_2021.pdf* (2021 LTRA Report).

NERC Technical Reports

NERC technical reports referenced in this NOPR are available here: *https://nerc.com/comm/PC/Pages/Inverter-Based-Resource-Performance-Task-Force.aspx.*

NERC, *Technical Report, BPS-Connected Inverter-Based Resource Modeling and Studies* (May 2020), *https://www.nerc.com/comm/PC/InverterBased%20Resource%20Performance%20Task%20Force%20IRPT/IRPTF_IBR_Modeling_and_Studies_Report.pdf* (Modeling and Studies Report).

NERC and WECC, *WECC Base Case Review: Inverter-Based Resources* (Aug. 2020), *https://www.nerc.com/comm/PC/InverterBased%20Resource%20Performance%20Task%20Force%20IRPT/NERC-WECC_2020_IBR_Modeling_Report.pdf* (Western Interconnection Base Case IBR Review).

NERC Major Event Reports

NERC event reports referenced in this NOPR are available here: *https://www.nerc.com/pa/rrm/ea/Pages/Major-Event-Reports.aspx.*

NERC, *1,200 MW Fault Induced Solar Photovoltaic Resource Interruption Disturbance Report* (June 2017), *https://www.nerc.com/pa/rrm/ea/1200_MW_Fault_Induced_Solar_Photovoltaic_Resource_/1200_MW_Fault_Induced_Solar_Photovoltaic_Resource_Interruption_Final.pdf* (Blue Cut Fire Event Report) (covering the Blue Cut Fire event (August 16, 2016)).

NERC and WECC, *900 MW Fault Induced Solar Photovoltaic Resource Interruption Disturbance Report* (Feb. 2018), *https://www.nerc.com/pa/rrm/ea/October%209%202017%20Canyon%202%20Fire%20Disturbance%20Report/900%20MW%20Solar%20Photovoltaic%20Resource%20Interruption%20Disturbance%20Report.pdf* (Canyon 2 Fire Event Report) (covering the Canyon 2 Fire event (October 9, 2017)).

NERC and WECC, *April and May 2018 Fault Induced Solar Photovoltaic Resource Interruption Disturbances Report* (Jan. 2019), *https://www.nerc.com/pa/rrm/ea/April_May_2018_Fault_Induced_Solar_PV_Resource_Int/April_May_2018_Solar_PV_Disturbance_Report.pdf* (Angeles Forest and Palmdale Roost Events Report) (covering the Angeles Forest (April 20, 2018) and Palmdale Roost (May 11, 2018) events).

NERC and WECC, *San Fernando Disturbance,* (Nov. 2020), *https://www.nerc.com/pa/rrm/ea/Documents/San_Fernando_Disturbance_Report.pdf* (San Fernando Disturbance Report) (covering the San Fernando event (July 7, 2020)).

NERC and Texas RE, *Odessa Disturbance* (Sept. 2021) *https://www.nerc.com/pa/rrm/ea/Documents/Odessa_Disturbance_Report.pdf* (Odessa 2021 Disturbance Report) (covering events in Odessa, Texas on May 9, 2021 and June 26, 2021).

NERC and WECC, *Multiple Solar PV Disturbances in CAISO* (Apr. 2022), *https://www.nerc.com/pa/rrm/ea/Documents/NERC_2021_California_Solar_PV_Disturbances_Report.pdf* (2021 Solar PV Disturbances Report) (covering four events: Victorville (June 24, 2021); Tumbleweed (July 4, 2021); Windhub (July 28, 2021); and Lytle Creek (August 26, 2021)).

NERC and Texas RE, *March 2022 Panhandle Wind Disturbance Report* (Aug. 2022), *https://www.nerc.com/pa/rrm/ea/Documents/Panhandle_Wind_Disturbance_Report.pdf* (Panhandle Disturbance Report) (covering the Texas Panhandle event (March 22, 2022)).

NERC and Texas RE, *2022 Odessa Disturbance* (Dec. 2022), *https://www.nerc.com/comm/RSTC_Reliability_Guidelines/NERC_2022_Odessa_Disturbance_Report%20(1).pdf* (Odessa 2022 Disturbance Report) (covering events in Odessa, Texas on June 4, 2022).

NERC and WECC, *2023 Southwest Utah Disturbance* (Aug. 2023), *https://www.nerc.com/comm/RSTC_Reliability_Guidelines/NERC_2023_Southwest_UT_Disturbance_Report.pdf* (Southwest Utah Disturbance Report) (covering events in Southwestern Utah on April 10, 2023).

NERC Alerts

NERC Alerts referenced in this NOPR are available here: *https://www.nerc.com/pa/rrm/bpsa/Pages/Alerts.aspx.*

NERC, *Industry Recommendation: Loss of Solar Resources during Transmission Disturbances due to Inverter Settings—II* (May 2018), *https://www.nerc.com/pa/rrm/bpsa/Alerts%20DL/NERC_Alert_Loss_of_Solar_Resources_during_Transmission_Disturbance-II_2018.pdf* (Loss of Solar Resources Alert II).

NERC, *Industry Recommendation: Inverter-Based Resource Performance Issues,* (Mar. 2023), *https://www.nerc.com/pa/rrm/bpsa/Alerts%20DL/NERC%20Alert%20R-2023-03-14-01%20Level%202%20-%20Inverter-Based%20Resource%20Performance%20Issues.pdf* (March 2023 Alert).

Other NERC Resources

NERC Libraries of Standardized Powerflow Parameters and Standardized Dynamics Models version 1 (Oct. 2015), *https://www.nerc.com/comm/PC/Model%20Validation%20Working%20Group%20MVWG%202013/NERC%20Standardized%20Component%20Model%20Manual.pdf* (NERC Standardized Powerflow Parameters and Dynamics Models).

NERC, *Events Analysis Modeling Notification Recommended Practices for Modeling Momentary Cessation Initial Distribution* (Feb. 2018), *https://www.nerc.com/comm/PC/NERCModelingNotifications/Modeling_Notification_-_Modeling_Momentary_Cessation_-_2018-02-27.pdf.*

NERC, *Case Quality Metrics Annual Interconnection-wide Model Assessment,* (Oct. 2021), *https://www.nerc.com/pa/RAPA/ModelAssessment/ModAssessments/2021_Case_Quality_Metrics_Assessment-FINAL.pdf.*

NERC, *Inverter-Based Resource Strategy: Ensuring Reliability of the Bulk Power System with Increased Levels of BPS-Connected IBRs* (Sept. 2022), https://www.nerc.com/comm/Documents/NERC_IBR_Strategy.pdf (NERC IBR Strategy).

United States of America

Federal Energy Regulatory Commission

Reliability Standards to Address Inverter-Based Resources
Docket No. RM22–12–000

DANLY, Commissioner, *concurring:*

1. I concur in today's order [1] in which we direct NERC to develop new or modified mandatory and enforceable Reliability Standards prior to 2030 in order to address a set of reliability risks we have known about, and been actively discussing, since at least 2016 and about which I have long warned. Is today's order important and necessary? Yes. Is it timely? No. Six of the thirteen documented events occurred in 2021.[2] The Commission and NERC could have, and should have, acted sooner, particularly since 2030 marks the time at which inverter-based resources (IBRs) ''are projected to account for a significant share of the electric energy generated in the United States.'' [3]

2. The reliability risks at issue arise from the rapid, widespread (one might say reckless) addition of IBRs (*e.g.,* wind and solar) to the Bulk-Power System (BPS).[4] According to NERC, ''[t]he rapid interconnection of [BPS]-connected [IBRs] is the most significant driver of grid transformation and poses a high risk to BPS reliability.'' [5] As NERC has explained, ''[e]ach event analyzed has identified new performance issues, such as momentary cessation, unwarranted inverter or plant-level tripping issues, controller interactions and instabilities, and other critical performance risks that must be mitigated.'' [6] ''Simulations conducted by the NERC Resource Subcommittee demonstrate that the risks to the [BPS] reliability posted by momentary cessation are greater than any of the actual IBR disturbances that NERC has documented since 2016 . . . These simulation results indicate that IBR momentary cessation occurring in the aggregate can lead to instability, system-wide uncontrolled separation, and voltage collapse.'' [7]

3. NERC has also observed ''[m]ultiple recent disturbances that involve the

[1] *Reliability Standards to Address Inverter-Based Resources,* 185 FERC ¶ 61,042 (2023).

[2] *Id.* P 26 & n.53 (''The 12 events report an average of approximately 1,000 MW of IBRs entering into momentary cessation or tripping in the aggregate. The 12 Bulk-Power System events are: (1) the Blue Cut Fire (August 16, 2016); (2) the Canyon 2 Fire (October 9, 2017); (3) Angeles Forest (April 20, 2018); (4) Palmdale Roost (May 11, 2018); (5) San Fernando (July 7, 2020); (6) the first Odessa, Texas event (May 9, 2021); (7) the second Odessa, Texas event (June 26, 2021); (8) Victorville (June 24, 2021); (9) Tumbleweed (July 4, 2021); (10) Windhub (July 28, 2021); (11) Lytle Creek (August 26, 2021); and (12) Panhandle Wind Disturbance (March 22, 2022).''). On June 4, 2022, an IBR-related disturbance near Odessa, Texas (the third in this location) occurred. *Id.* P 27.

[3] *Id.* P 58 (footnote omitted).

[4] *Id.* P 2.

[5] NERC, *Inverter-Based Resource Strategy: Ensuring Reliability of the Bulk Power System with Increased Levels of BPS-Connected IBRs,* at 1 (June 2022) (footnote omitted), *https://www.nerc.com/comm/Documents/NERC_IBR_Strategy.pdf.*

[6] *Id.* at 4.

[7] *Reliability Standards to Address Inverter-Based Resources,* 185 FERC ¶ 61,042 at P 14 (citations omitted).

widespread reduction of solar photovoltaic (PV) resources have occurred in California, Utah, and Texas.'' [8] The ''first major events involving [battery energy storage system facilities'' occurred just last year in March and April, 2022.[9] The reliable operation of the Bulk-Power System remains imperiled until these issues are addressed. Time is of the essence.

4. Our oversight role requires us to remain vigilant in ensuring that NERC Reliability Standards are timely, efficient, and effective. Up to nearly fourteen years to establish mandatory and enforceable NERC Reliability Standards to address a known, and potentially catastrophic, risk to the reliability of the BPS is simply too long a time to wait. And we will have to wait yet longer to learn whether the standards we do ultimately implement end up proving effective. Who knows what will happen in the meantime.

5. Better late than never, I suppose.

For these reasons, I respectfully concur.

James P. Danly,

Commissioner.

[FR Doc. 2023–23581 Filed 10–27–23; 8:45 am]

BILLING CODE 6717–01–P

[8] *2022 California Battery Energy Storage Sys. Disturbances, California Events: March 9 and April 6, 2022, Joint NERC and WECC Staff Report,* at iv (Sept. 2023), *https://www.nerc.com/comm/RSTC/Documents/NERC_BESS_Disturbance_Report_2023.pdf.*

[9] *Id.*

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Part III

Environmental Protection Agency

40 CFR Part 702
Procedures for Chemical Risk Evaluation Under the Toxic Substances Control Act (TSCA); Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 702

[EPA–HQ–OPPT–2023–0496; FRL–8529–01–OCSPP]

RIN 2070–AK90

Procedures for Chemical Risk Evaluation Under the Toxic Substances Control Act (TSCA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA, ''the Agency'') is proposing to amend the procedural framework rule for conducting risk evaluations under the Toxic Substances Control Act (TSCA). The purpose of risk evaluations under TSCA is to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or non-risk factors, including unreasonable risk to potentially exposed or susceptible subpopulations identified as relevant to the risk evaluation by EPA, under the conditions of use. EPA has reconsidered the procedural framework rule for conducting such risk evaluations and determined that certain aspects of that framework should be revised to better align with applicable court decisions and the statutory text, to reflect the Agency's experience implementing the risk evaluation program following enactment of the 2016 TSCA amendments, and to allow for consideration of future scientific advances in the risk evaluation process without need to further amend the Agency's procedural rule.

DATES: Comments must be received on or before December 14, 2023. Under the Paperwork Reduction Act, comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before November 29, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2023–0496, through the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Susanna W. Blair, Immediate Office, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–4371; email address: *blair.susanna@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

EPA is primarily proposing to amend procedural requirements that apply to the Agency's activities in carrying out TSCA risk evaluations. However, EPA is also proposing certain amendments to the process and requirements that manufacturers (including importers) would be required to follow when they request an Agency-conducted TSCA risk evaluation on a particular chemical substance. You may be potentially affected by this action if you manufacture or import chemical substances regulated under TSCA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities and corresponding NAICS codes for entities that may be interested in or affected by this action. 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:

- Petroleum Refineries (NAICS code 324110);
- Chemical Manufacturing (NAICS code 325);
- Unlaminated Plastics Film and Sheet (except Packaging) Manufacturing (NAICS code 326113);
- Unlaminated Plastics Profile Shape Manufacturing (NAICS code 326121);
- Plastics Pipe and Pipe Fitting Manufacturing (NAICS code 326122);
- Laminated Plastics Plate, Sheet (except Packaging), and Shape Manufacturing (NAICS code 326130);
- Polystyrene Foam Product Manufacturing (NAICS code 326140);
- Urethane and Other Foam Product (except Polystyrene) Manufacturing (NAICS code 326150);
- Plastics Bottle Manufacturing (NAICS code 326160);
- Plastics Plumbing Fixture Manufacturing (NAICS code 326191);
- All Other Plastics Product Manufacturing (NAICS code 326199);
- Tire Manufacturing (except Retreading) (NAICS code 326211);
- Tire Retreading (NAICS code 326212);
- Rubber and Plastics Hoses and Belting Manufacturing (NAICS code 326220);
- Rubber Product Manufacturing for Mechanical Use (NAICS code 326291);
- All Other Rubber Product Manufacturing (NAICS code 326299);
- Pottery, Ceramics, and Plumbing Fixture Manufacturing (NAICS code 327110);
- Clay Building Material and Refractories Manufacturing (NAICS code 327120);
- Flat Glass Manufacturing (NAICS code 327211);
- Other Pressed and Blown Glass and Glassware Manufacturing (NAICS code 327212);
- Glass Container Manufacturing (NAICS code 327213);
- Glass Product Manufacturing Made of Purchased Glass (NAICS code 327215);
- Cement Manufacturing (NAICS code 327310);
- Ready Mix Concrete Manufacturing (NAICS code 327320);
- Concrete Block and Brick Manufacturing (NAICS code 327331);
- Concrete Pipe Manufacturing (NAICS code 327332); and
- Other Concrete Product Manufacturing (NAICS code 327390).

If you have any questions regarding the applicability of this proposed action to a particular entity, consult the technical information contact listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is the Agency's authority for taking this action?

EPA is issuing this Notice of Proposed Rulemaking (NPRM) pursuant to the authority in TSCA section 6(b)(4) (15 U.S.C. 2605(b)(4)). EPA has inherent authority to reconsider previous decisions and to revise, replace, or repeal a decision to the extent permitted by law and supported by reasoned explanation. *See FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009); *see also Motor Vehicle Mfrs. Assn* v. *State Farm Mutual Auto. Ins. Co.,* 463 U.S. 29, 42 (1983). See also the discussion in Units II.A. and B.

C. What action is the Agency taking?

EPA is proposing to amend regulations that address how the Agency conducts risk evaluations on chemical

substances under TSCA. These changes include, but are not limited to, targeted changes to certain definitions, clarifications regarding the required scope of risk evaluations, considerations related to peer review and the Agency's implementation of the scientific standards, the approach for risk determinations on chemical substances and considerations related to unreasonable risk, and the process for revisiting a completed risk evaluation. EPA is also proposing to amend the process and requirements for manufacturers making a voluntary request for an Agency-conducted risk evaluation on a particular chemical substance. EPA is requesting public comment on all aspects of this proposal.

D. Why is the Agency taking this action?

As further explained in Units I., II., and III., EPA reexamined the July 20, 2017, final rule (Ref. 1) (hereinafter ''2017 final rule'') that established procedures and requirements for chemical risk evaluation under TSCA, in consideration of:

- The statutory text and structure and Congressional intent.
- The November 14, 2019, opinion issued by U.S. Court of Appeals for the Ninth Circuit in response to petitions for judicial review, consolidated under *Safer Chemicals, Healthy Families* v. *USEPA* (Ref. 2), of the 2017 final rule and related court orders.
- Executive Order 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis* (Ref. 3).
- Lessons learned from the Agency's implementation of the risk evaluation program to date including feedback from the National Academies of Science Engineering and Medicine and scientific peer reviewers.

As a result of this reexamination, the Agency is proposing targeted amendments of the 2017 final rule.

E. What are the estimated incremental impacts of this action?

The incremental impacts of this action are associated with procedural requirements, as described in Unit III.K., which apply to manufacturers when manufacturers (including importers) elect to request that EPA perform a risk evaluation on a particular chemical substance. EPA has estimated the potential burden and costs associated with the proposed requirements for submitting a request for an Agency-conducted risk evaluation on a particular chemical substance. These estimates of burden and costs are available in the docket, and are discussed in Unit V. and briefly summarized here (Ref. 4).

The total estimated annual burden is 166 hours and $115,711 (per year), which is based on an estimated per request burden of 166 hours.

In addition, EPA's evaluation of the potential costs associated with this action is discussed in Unit VI.B. Since this rulemaking focuses on the activities that a manufacturer must perform, the estimated incremental costs to the public are expected to be negligible. EPA requests specific comment on the burden estimate and assumptions associated with the calculation associated with the burden (*e.g.,* number of requests EPA expects).

F. What should I consider as I prepare my comments for EPA?

1. Submitting CBI

Do not submit CBI to EPA through *https://www.regulations.gov* or email. If you wish to include CBI in your comment, please follow the applicable instructions at *https://www.epa.gov/dockets/commenting-epa-dockets#rules* and clearly mark the part or all of the information that you claim to be CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments

When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.html.*

II. Background

A. Statutory Requirements for Risk Evaluation

TSCA section 6(b)(4) requires EPA to establish, by rule, a process to conduct risk evaluations. Specifically, EPA is directed to use this process to ''determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation by the Administrator, under the conditions of use.'' (15 U.S.C. 2605(b)(4)(A)). TSCA sections 6(b)(4)(A) through (H) enumerate the deadlines and minimum requirements applicable to this process, including provisions that direct which chemical substances must undergo risk evaluation, the development of criteria for manufacturer-requested risk evaluations, the minimum components of an Agency risk evaluation, and the timelines for public comment and completion of the risk evaluation. The law also requires EPA to consider reasonably available information and operate in a manner that is consistent with the best available science and make decisions based on the weight of the scientific evidence. (15 U.S.C. 2625(h) and (i)).

B. Judicial Review of the 2017 Final Rule

In the preamble of the 2017 final rule, EPA explained that it interpreted the requirements of TSCA section 6 to apply to conditions of use for which manufacturing, processing, or distribution in commerce is intended, known to be occurring, or reasonably foreseen to occur, rather than to legacy uses, which EPA used as a term for continuing, *in-situ* uses of chemicals for which manufacturing, processing, or distribution in commerce had ceased (*e.g.,* certain phased-out flame retardants present in textiles or furniture that continue to be used, asbestos-containing pipe wrap, etc.), or associated disposal. In addition, among other regulatory provisions, the 2017 final rule established that the submission of inaccurate, incomplete, or misleading information pursuant to a manufacturer-requested risk evaluation is a prohibited act subject to penalties under title 18 of the U.S. Code. The 2017 final rule also established requirements for information that must be submitted by a manufacturer when requesting that EPA conduct a risk evaluation (40 CFR 702.37(b)(4)) and that the submitted information be held to the scientific standards established in TSCA section 26(h) (40 CFR 702.37(b)(6)).

Several non-governmental organizations filed petitions for judicial review of the 2017 final rule, which were consolidated in the U.S. Court of Appeals for the Ninth Circuit (hereafter, the ''Ninth Circuit'') under *Safer Chemicals, Healthy Families* v. *USEPA,* on August 10, 2017 (Ref. 2). The Ninth Circuit issued its opinion on November 14, 2019, holding that the EPA unlawfully excluded ''legacy uses and associated disposals'' from the conditions of use that the agency would consider in any risk evaluation (Ref. 2). Also, at the Agency's request, the Ninth Circuit (1) vacated and remanded the rule provisions applying criminal penalties to the submission of inaccurate or incomplete information to

EPA pursuant to a manufacturer-requested risk evaluation, and (2) remanded without vacatur the rule provisions addressing the information requirements for, and application of the TSCA section 26 scientific standards to, a manufacturer-requested risk evaluation (Ref. 5).

The Court declined to rule on several other aspects of the challenge, including that the rule suggested EPA would make risk determinations on individual uses of a chemical instead of on the chemical itself, and statements in the preamble regarding broad discretion to choose to exclude conditions of use from the scope of the risk evaluations. The Court reasoned that petitioners' claim that EPA would make risk determinations on individual uses instead of on the chemical itself as the law required was not justiciable due to ambiguity in the 2017 final rule text. The Court noted it was unclear ''whether the Agency will actually conduct risk evaluations in the manner [those litigants] fear[ed]'' and that the claim was therefore not justiciable (Ref. 2). With regard to petitioners' claim that EPA intended to exclude conditions of use out of the scope of the risk evaluations, the court held that claim not ripe, but noted that it did ''not interpret the language in the [2017 final rule] to say anything about exclusion of conditions of use'' (Ref. 2).

C. Review of the 2017 Final Rule Under Executive Order 13990

Executive Order 13990 instructs that the Federal Government be guided by the best science and be protected by processes that ensure the integrity of Federal decision-making, and established the Administration's policy of, among other concerns, following the science, improving public health and protecting the environment, limiting exposure to dangerous chemicals, reducing greenhouse gas emissions, and prioritizing environmental justice (EJ) when delivering on these concerns. Executive Order 13990 also instructs agencies to (1) review actions issued between January 20, 2017, and January 20, 2021, that may be inconsistent with or present obstacles to implementing the policy established in the order and, (2) consider suspending, revising, or rescinding such actions. Also on January 20, 2021, the Biden-Harris Administration issued a list of specific actions to be reviewed in accordance with Executive Order 13990 that included the 2017 final rule (Ref. 6).

EPA announced certain policy changes for TSCA risk evaluations on June 30, 2021 (Ref. 7) to ensure that risk evaluations follow the science and the law, including:

1. Expanded Consideration of Exposure Pathways

Prior to June 30, 2021, the first 10 risk evaluations did not consistently assess air, water or disposal exposures to the general population based on an argument that these exposure pathways were already regulated, or could be regulated, under other statutes administered by EPA, such as the Clean Air Act, Safe Drinking Water Act, Clean Water Act, Resource Conservation and Recovery Act, or Comprehensive Environmental Response, Compensation, and Liability Act. The approach to exclude certain exposure pathways conflicted with the plain language of the law to evaluate chemical substances under the known, intended or reasonably foreseen circumstances associated with the full lifecycle of the chemical substance. It prevented consideration of relevant exposure information (*e.g.,* information indicating presence of the chemical in air or water) in spite of statutory requirements that the Agency base its decisions on the best available science. The approach also resulted in a failure to consistently and comprehensively address potential exposures to the general population, as well as to certain potentially exposed or susceptible subpopulations. EPA announced it would no longer exclude consideration of such exposure pathways from TSCA risk evaluations.

2. Assumptions About Use of Personal Protective Equipment (PPE)

Prior to June 30, 2021, EPA's TSCA risk evaluations generally assumed that workers were always provided and appropriately used PPE. However, as described in Unit III.G.1., data on violations of PPE use suggest that assumptions that PPE is always provided to workers, worn properly, and effective at eliminating exposures are not justified. In addition, TSCA requires that risk evaluations consider the known, intended or reasonably foreseen circumstances associated with the chemicals substance—including circumstances that result or could result in exposures to workers. For the reasons described further in Unit III.E.1., EPA believes that circumstances that result in occupational exposures to chemicals are reasonable to foresee, and, in many cases, known. As such, continued application of this general assumption could result in risk evaluations that underestimate risks, and in turn, prevent risk management rules from affording necessary protections. EPA announced that it would no longer assume that PPE is always used in occupational settings when making unreasonable risk determinations for a chemical.

3. ''Whole Chemical'' Risk Determination Approach

Prior to June 30, 2021, EPA made separate unreasonable risk determinations for each condition of use identified in the risk evaluation scope. EPA announced that, going forward, it would make the determination of unreasonable risk on ''the chemical substance,'' rather than for each individual condition of use in isolation. As described further in Unit III.F.1., doing so going forward better aligns with the statute and Congress' intent, and enables the Agency's risk determinations to better reflect the potential for combined exposures across multiple conditions of use.

EPA invites public comment on the adoption of these changes in the amended procedural rule.

D. Agency Implementation

Since the 2017 final rule, EPA has finalized ten chemical risk evaluations under TSCA and published a draft supplement to the risk evaluation for 1,4-Dioxane. Additionally underway are 20 more risk evaluations on high-priority substances, a part 2 of the asbestos risk evaluation that will cover additional fiber types and ''legacy'' conditions of use, and several manufacturer-requested risk evaluations (Ref. 8). EPA is also developing a number of rulemakings to address unreasonable risks identified in these risk evaluations. The Agency has gained valuable experience in carrying out these actions and received a wealth of feedback on our procedures from public commenters and through scientific peer review. The proposed rule reflects lessons learned, efforts to increase efficiencies, and includes improvements to the process and requirements for manufacturer-requested risk evaluations that are more consistent with Agency scientific practices and policies. The proposed rule also includes some structural and substantive revisions for greater clarity and readability, and, more generally, to enhance the public's understanding of how EPA expects to carry out TSCA risk evaluations.

EPA intends that the provisions of this rulemaking be severable. In the event that any individual provision or part of this rulemaking is invalidated, EPA intends that this would not render the entire rulemaking invalid, and that any individual provisions that can continue to operate will be left in place.

III. Proposed Amendments

A. Policy Objectives

The risk evaluation process established in 40 CFR part 702, subpart B outlines how EPA will determine, pursuant to TSCA section 6(b)(4)(A), whether a chemical substance presents an unreasonable risk of injury to health or the environment. EPA's general objectives for the proposed amendments, in keeping with the considerations addressed in Unit II, are to (1) better align the TSCA risk evaluation process with the statutory text and structure and Congressional intent, (2) ensure that the risk evaluation process under TSCA is consistent with the best available science and based on the weight of the scientific evidence, maintains the integrity of Federal decision-making, and upholds the policy in various Executive orders, (3) address the outcome of the Ninth Circuit litigation on the 2017 final rule, (4) apply lessons learned to date to improve the Agency's processes moving forward, and (5) enhance the public's understanding of how EPA expects to carry out subsequent TSCA risk evaluations. Through improvements to the risk evaluation process in these proposed amendments, EPA anticipates that any risk management actions following any determination that a chemical substance presents unreasonable risk will result in needed public health and environmental protections that limit exposure to dangerous chemicals, and, where applicable, address the climate crisis and advance environmental justice.

To accomplish these objectives, EPA is proposing targeted changes and clarifying edits to the existing process by which the Agency evaluates risk from chemical substances for purposes of TSCA section 6. Additionally, this proposal includes structural changes to the regulatory text to accomplish these goals. EPA is not proposing to establish highly detailed provisions that will address every eventuality or possible consideration that might arise. Due to the rapid advancement of the science of risk evaluation and the science and technology that inform risk evaluation, this proposed rule seeks to ensure that the risk evaluation process is transparent, without unduly restricting the science that will be used to conduct the evaluations, allowing the Agency flexibility to adapt and keep pace with changing science as it conducts TSCA risk evaluations into the future.

B. General Provisions

1. Applicability of Updated Procedures

EPA is proposing that the changes to the procedures as part of this rulemaking would be applied to all risk evaluations initiated on or after the date of the final rule. For risk evaluations in process as of the date of the final rule, EPA would expect to apply the proposed changes to those risk evaluations only to the extent practicable, taking into consideration the statutory requirements and deadlines. Where a change to a risk evaluation would prevent the Agency from meeting the statutory deadline, for example, EPA would generally not view that change as practicable. However, where applying a proposed change would impact timeliness but also ensure compliance with other statutory obligations (*e.g.,* conducting an appropriately scoped risk evaluation), EPA would make a judgment on practicability by weighing the implications for public health and environment, defensibility from both a scientific and legal perspective, Agency priorities and the availability of resources. As a general matter, EPA believes that most of its ongoing risk evaluations, including the ongoing supplement to the 1,4-Dioxane risk evaluation and part two of the Asbestos risk evaluation, will likely conform to the changes contemplated in this NPRM, and does not anticipate significant challenges in this area. Finally, EPA does not expect to apply these procedures retroactively to risk evaluations already completed.

2. Categories of Chemical Substances

EPA is proposing to clarify the regulations with respect to their applicability to risk evaluations on categories of chemical substances. Pursuant to TSCA section 26(c), wherever TSCA requires or authorizes EPA to take action on a chemical substance, EPA can take that same action with respect to a category of chemical substances (*i.e.,* groups of chemical substances which are, for example, similar in molecular structure, in physical, chemical, or biological properties, in use, or in mode of entrance into the human body or into the environment). Although the rule's procedural requirements generally refer to ''chemicals'' or ''chemical substances,'' EPA is proposing to clarify in the regulatory text at § 702.31(d) that those references also apply to categories of chemical substances.

C. Definitions

EPA is proposing changes to a number of definitions codified in the existing regulatory text. EPA is proposing to eliminate the codified definitions for ''best available science'' and ''weight of scientific evidence.'' As described in greater detail in Unit III.I., EPA believes that defining these concepts in the rulemaking is both unnecessary and inhibits the Agency's flexibility to quickly adapt to and implement changing science. Not codifying regulatory definitions of these scientific terms is consistent with the approach in the 2017 proposed rule (Ref. 9) (hereinafter ''2017 proposed rule'') and was supported by public comment. Instead, as described in Unit III.I. EPA intends to ensure that its risk evaluations are consistent with Agency guidance and methodologies in applying these terms. As TSCA requires, at 15 U.S.C. 2625(h), EPA's risk evaluations will continue to use scientific information, technical procedures, measures, methods, protocols, methodologies, or models, employed in a manner consistent with the best available science. Further, both risk evaluation and risk management decisions under TSCA section 6 will be based on the weight of the scientific evidence, as required by 15 U.S.C. 2625(i). EPA's expected application of these terms is more fully described in Unit III.G. regarding Risk Evaluation Considerations.

Second, and as described further in Unit III.G.4., EPA is proposing an addition to the examples identified in the definition of ''potentially exposed or susceptible subpopulation'' which currently include ''infants, children, pregnant women, workers, or the elderly.'' The Agency proposes to add ''overburdened communities'' to better reflect the Agency's intent to consider risks to particular communities in the United States that potentially experience disproportionate environmental harms and risks, while also ensuring environmental justice—the fair treatment and meaningful involvement of all people regardless of race, color, culture, national origin, income, and educational levels with respect to the development, implementation, and enforcement of protective environmental laws, regulations, and policies—is considered where appropriate, including as part of any subsequent risk management action.

Finally, EPA is proposing minor updates to a number of other definitions to better align with existing Agency guidance. Specifically, the definitions for ''pathways'' and ''routes'' have been

adjusted for consistency with *EPA's Exposure Factors Handbook* (Ref. 10). Additionally, EPA is also proposing clarifying edits to the definitions for ''aggregate exposure'' and ''sentinel exposure'' to align with Agency guidance, and to make clear that the terms can apply not only to individual persons, but to the populations and environment when doing so is consistent with the best available science. EPA is not proposing to amend the definitions for ''act,'' ''conditions of use,'' ''reasonably available information,'' ''sentinel exposure,'' ''uncertainty,'' or ''variability.''

D. Technical Corrections and Reorganization

The proposed rule reflects a number of minor updates and corrections and general organizational restructuring. For example, references to 15 U.S.C. 2605(b)(2)(A) have been removed in light of the fact that the law's one-time requirement related to identification of the first group of 10 chemicals for risk evaluation has been satisfied and is no longer applicable for purposes of the procedural rule. Additionally, EPA made minor updates to the regulatory text to correct typos and to ensure consistency in use of certain phrases (*e.g.,* manufacturer-requested risk evaluations). More generally, EPA aimed to improve the readability of certain provisions, and, ultimately, enhance the public's ability to understand how EPA will undertake TSCA risk evaluations. As part of this effort, EPA is proposing to reorganize the sequence and structure of regulatory provisions to, for example, establish sections that distinguish between the components of the risk evaluation, the analytic considerations to be applied in the risk evaluation, and the associated procedural timeframes and actions. EPA welcomes comment on these changes to enhance clarity and readability. EPA has provided a short description of the reorganization:

- Proposed §§ 702.31, 702.33, and 702.35 have retained the same organization.
- Proposed § 702.37 ''Evaluation requirements'' includes many of the components of § 702.41 of the 2017 final rule, including statutory requirements of a risk evaluation, upholding the science requirements of section 26(h), inclusion of conditions of use, and clarity regarding making an unreasonable risk determination on the chemical substance. This section also includes EPA's approach to information and information sources, much of which is moved from § 702.41(b) in the 2017 final rule. New proposed language included in this proposed section is EPA's approach to conducting a fit-for-purpose risk evaluation, addressing information gaps, and use of data gathering authorities.
- Proposed § 702.39 is a newly titled section ''Components of risk evaluation'' that is composed of 2017 final rule §§ 702.41, 702.43, 702.45. This one section includes the components of a risk evaluation (*e.g.,* scope, hazard assessment, exposure assessment, risk characterization, risk determination) and what they must contain. Some of the specific requirements of the hazard and exposures assessment have been streamlined and reconfigured from the 2017 final rule.
- Proposed § 702.41 ''Peer review'' was § 702.47 in the 2017 final rule.
- Proposed § 702.43 contains the parts of a risk evaluation (*e.g.,* draft scope, final scope, draft risk evaluation and final risk evaluation) and the process and timelines associated with the development and publication of these parts. Much of this section was moved from the 2017 final rule § 702.41. This proposed section now includes provisions pertaining to substantive revisions to these documents post publication.
- Proposed § 702.45 is the revised process for submitting a manufacturer requested risk evaluation, moved from the 2017 final rule 702.37.
- Proposed § 702.47 ''Interagency collaboration'' remains unchanged from 2017 final rule § 702.39. As part of EPA's commitment to identify information earlier in the prioritization and risk evaluation processes, the Agency expects to continue to engage and enhance coordination with other Federal agencies that may have chemical-specific information. Doing so will not only serve to inform the Agency's work in the risk evaluation, but can also help to proactively identify conditions of use that may be essential to national security, critical infrastructure, and/or mission critical uses, identify existing safety measures Federal agencies already have in place for their uses, and inform any subsequent risk management approaches.
- Proposed § 702.49 ''Publicly available information'' remains substantively unchanged from § 702.51 from the 2017 final rule.

E. Scope of TSCA Risk Evaluations

1. Inclusion of All Conditions of Use

EPA is proposing a number of changes to the regulatory text to make clear that the scope of TSCA risk evaluations will not exclude any ''conditions of use'' (*i.e.,* any circumstance, based on reasonably available information, under which a chemical substance is known, intended or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of) to better align with the statutory text and structure, including modification to various provisions in the current rule that state or imply that EPA has broad discretion to choose which conditions of use it will or will not evaluate. These proposed amendments are intended to ensure that the scopes of future risk evaluations are determined in accordance with the law.

When TSCA was originally signed into law in 1976, there were tens of thousands of chemicals in commerce and the law imposed no mandate that EPA conduct any assessments to determine whether those existing chemicals present unreasonable risk of injury to health or the environment. While EPA did conduct some risk assessments on a handful of these existing chemicals prior to 2016, those assessments were focused on a specific subset of individual conditions of use of chemicals (*e.g.,* paint and coating removal, vapor degreasing, etc.). The net effect of this use-by-use approach was that—even if EPA were to identify risks through a risk assessment and successfully promulgate a rule under TSCA to manage those particular risks—the public would still not have certainty regarding risks from the full spectrum of uses of the chemical substance. This uncertainty, in turn, would continue to erode public confidence in the safety of chemicals pervasive in our households, communities and the environment, and encourage states to adopt an increasingly complex patchwork of regulatory measures to address chemical risks.

One of the defining features of the 2016 amendments to TSCA was the mandate for EPA to systematically prioritize those thousands of existing chemicals for review, and then to evaluate their risks, holistically, under the chemical's ''conditions of use''—a phrase that Congress defined to capture a chemical's full lifecycle, *i.e.,* ''the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of.'' (15 U.S.C. 2602(4)). While clearly a significant undertaking, Congress recognized that comprehensive progress on evaluating the universe of thousands of existing chemicals would not be made without this mandate, coupled with a strong risk-based safety standard and deadlines

for completing the work (Ref. 11). To allow EPA to continue to address only a subset of each chemical's uses as part of the new TSCA process would deny such comprehensive progress.

The question of whether the Agency has broad discretion under the law to exclude conditions of use from the scope of risk evaluations was the source of much discussion publicly during the development of the 2017 proposed and final rules. EPA believes the approach proposed herein is more consistent with congressional intent and reflects consensus of technical discussion with congressional negotiators leading up to the passage of the 2016 amendments. See also Ref. 11 at p. S3516 (implying the lack of discretion in the ''mandate to consider conditions of use'') and p. S3519 (referencing the prior TSCA risk assessments that did not consider ''all conditions of use'' and Congress' desire to nonetheless allow EPA to proceed with risk management based on those select ''partial'' risk evaluations). However, in the preamble to the 2017 final rule the Agency asserted that it retained discretion to exclude conditions of use from the scope of TSCA risk evaluations. Ref. 1 at p. 33729.

In support of this assertion of discretionary scoping authority in the 2017 final rule, EPA pointed to language in TSCA section 6(b)(4)(D) that requires EPA to identify the conditions of use in a scope document that the Agency ''expects to consider'' in a risk evaluation and the ''as determined by the Administrator'' phrasing in the statutory definition of ''conditions of use'' itself (Ref. 1 at p. 33729). EPA argued that such language gave the Agency discretion to select among the conditions of use and, ultimately, to exclude conditions of use from the scope of TSCA risk evaluations. EPA expressed at that time that those provisions empowered the Agency to exclude, for example, conditions of use that the Agency deemed ''de minimis'' in nature, or conditions of use where opportunities for exposure were likely to be limited (*e.g.,* closed system or intermediate) (Ref. 1 at p. 33729). As discussed further in Unit III.E.3., EPA has also relied on this interpretation to exclude consideration of exposure pathways in TSCA risk evaluations where EPA or another regulatory agency had or could assess and regulate the same chemical—a policy that excluded exposures to the general population through air, water and disposal, and left potential risks unaccounted for.

Upon further review, and as described in the preamble to the 2017 proposed rule and supported by legislative history, EPA believes that the better reading of TSCA's statutory text and structure is that EPA does not have discretionary scoping authority, and that risk evaluations are to be conducted on the circumstances under which the chemical is known, intended and reasonably foreseen to be manufactured, processed, distributed in commerce, used, and disposed of (*i.e.,* activities that constitute the ''conditions of use'' within the meaning of TSCA section 3(4)) (15 U.S.C. 2602(4)). The plain language of TSCA section 6(b)(4)(A) specifies that EPA must determine in a risk evaluation whether ''a chemical substance'' presents an unreasonable risk of injury to health or the environment ''under the conditions of use.'' Similar language appears throughout section 6 of the law. See, for example, 15 U.S.C. 2605(b)(4)(G)(i) and (ii) stating that the risk evaluation ''for a chemical substance'' must be completed within 3 to 3.5 years of initiation. As such, while EPA at one time interpreted the statue to permit a different approach, the statute is better interpreted as requiring that the evaluation must be on the chemical substance—not a subset of individual conditions of use of the chemical substance. EPA also believes the purpose of the requirement to evaluate the ''chemical substance'' was to ensure that the Agency, through the risk evaluation process, would comprehensively determine whether a chemical substance, under the known, intended, and reasonably foreseen circumstances of manufacture, processing, distribution in commerce, use and disposal, presents an unreasonable risk. This reading also aligns with the requirements under the 2016 TSCA amendments to establish a constant pipeline of activity on assessing chemical substances and managing risks, effectively driving forward progress on the tens of thousands of unreviewed existing chemical substances in commerce (15 U.S.C. 2605(b)(2) and (b)(3)(C)). In the absence of comprehensive risk evaluations on chemical substances (*i.e.,* an approach that considered only a subset of a chemical's uses), the unevaluated uses would create uncertainty as to whether EPA had fully addressed a chemical's unreasonable risk and further delay progress on the backlog of existing chemicals.

Given these considerations, EPA believes that the phrase ''as determined by the Administrator'' in the statutory definition of ''conditions of use'' requires application of fact and professional judgment in determining whether or not a particular circumstance is known, intended or reasonably foreseen—and should not be viewed as license to select among those circumstances in determining which should be included or excluded from the scope of a risk evaluation that is to be completed on a chemical substance (15 U.S.C. 2602(4)). Likewise, the instruction in TSCA section 6(b)(4)(D) for the Agency to—during the scoping phase—identify the conditions of use it ''expects to consider'' in a risk evaluation, is best read as directing the Agency to identify the uses and other activities that it has determined constitute the conditions of use of the chemical substance, while acknowledging that the Agency's expectations at the scoping phase may not always align perfectly with the conditions of use actually considered and assessed in draft and final risk evaluations. EPA may, for example, mistakenly identify a condition of use in the scope document, and later remove it from analysis in the risk evaluation. Alternatively, EPA might be unaware of or inadvertently exclude a condition of use during the scoping phase, but later incorporate it into its risk evaluation. While EPA at one time interpreted the language differently, EPA no longer believes that the ''expects to consider'' language in TSCA section 6(b)(4)(D) gives the Agency broad discretion to choose among conditions of use that it will include in a risk evaluation of a chemical substance. The Ninth Circuit agreed with this view, noting that the phrase ''conditions of use that the EPA plans to consider'' in the 2017 final rule and the similar phrase ''expects to consider'' in TSCA section 6(b)(4)(D) simply refer to the Agency's role in determining what the conditions of use are for a particular substance, and do not grant EPA discretion to exclude conditions of use from the scope of a risk evaluation (Ref. 2).

Consideration of all conditions of use in TSCA risk evaluations is also necessary from a scientific perspective to ensure development of a technically sound determination as to whether a chemical substance presents an unreasonable risk of injury to health or the environment. Thus, consideration of all conditions of use ensures risk evaluations are consistent with the best available science and based on the weight of scientific evidence (15 U.S.C. 2625(h) and (i)). As discussed further in Unit III.G.2., there may be situations where certain conditions of use are associated with relatively lower exposures, but nonetheless in the aggregate those uses may contribute to

unreasonable risk. Exclusion of conditions of use from risk evaluations—irrespective of the Agency's intention in so doing—deprives the public of a complete picture of the chemical's risk, and may leave significant risk to human health or the environment unaccounted for and ultimately unaddressed.

For these reasons, the proposed rule clarifies that EPA will not exclude conditions of use (*i.e.,* any circumstances under which the chemical is known, intended or reasonably foreseen to be manufactured, processed, distributed in commerce, used or disposed of) from the scope of a risk evaluation by amending the regulatory text where it was either stated or implied that the Agency had broad discretion to exclude certain conditions of use from analysis.

2. Determination of ''Conditions of Use''

Although EPA no longer interprets TSCA to allow the Agency to exclude any intended, known or reasonably foreseen conditions of use from the scope of a risk evaluation, EPA nonetheless retains authority to exercise judgment in making its determination as to whether a particular circumstance is intended, known, or reasonably foreseen, and therefore falls within the definition of ''condition of use'' for a particular chemical. As such, for each risk evaluation, EPA has and will continue to undergo a process to determine each chemical's conditions of use, analyzing reasonably available information and applying the facts, Agency expertise and professional judgment on a case-by-case basis. As described previously, the phrase ''as determined by the Administrator'' in the statutory definition of ''conditions of use'' requires EPA to review the reasonably available information and exercise judgment in determining whether a particular circumstance is intended, known or reasonably foreseen. For example, when information suggests that a circumstance of manufacture, processing, distribution in commerce, use or disposal is known to be occurring, EPA will determine that known circumstance to be a condition of use and include it within the scope of the risk evaluation, irrespective of other factors like the likelihood of that particular condition of use to be a significant contributor to risk. Likewise, where, in the Agency's professional judgment, a circumstance is reasonably foreseen to occur in the future, EPA will determine that circumstance to be a condition of use and include it within the scope of the risk evaluation, even where that condition of use may not contribute significantly to the Agency's ultimate conclusions on risk.

In the preamble to the 2017 final rule (Ref. 1) EPA identified legacy disposal as falling outside the definition of ''conditions of use.'' EPA interpreted the TSCA definition for ''conditions of use'' as focusing on circumstances that are prospective or on-going, rather than reaching back to evaluate risks associated with legacy disposal (*i.e.,* disposal that has already occurred) (Ref. 1 at p. 33730). The Ninth Circuit agreed, holding that TSCA unambiguously does not require legacy disposals to be considered as conditions of use (Ref. 2 at pp. 425–426). The Court reasoned that a substance that has already been disposed of will not ordinarily be intended, known, or reasonably foreseen to be prospectively manufactured, processed, distributed in commerce, used, or disposed of again (Ref. 2). EPA is not reconsidering that issue in this proposal. However, EPA generally does not view any other categorical exclusions from the definition of condition of use as appropriate.

With respect to legacy use and associated disposal, however, EPA now believes that such circumstances are, in fact, ''conditions of use'' and must be considered in risk evaluations. (Ref. 2, pp. 420–421). An example would be in-situ asbestos insulation, a product no longer manufactured but nevertheless an ongoing downstream use. Future disposal of asbestos insulation is clearly an example of a chemical substance being ''disposed of'' and to the extent it is ''intended'' that such a substance be disposed of, or ''known'' that it will be, or if such disposal is ''reasonably foreseen,'' that circumstance unambiguously falls within TSCA's definition of ''conditions of use.'' (Ref. 2, pp. 420–421). As such, EPA is already developing a ''part 2'' of the TSCA risk evaluation for asbestos in order to include analysis of exposures and potential risks from legacy uses and expects future risk evaluations to also consider legacy uses and associated disposals as conditions of use (*i.e.,* circumstances associated with ''use'' and ''disposal''). EPA believes that this approach is consistent with the statutory text and structure, as well as Congressional intent.

There are other categories of circumstances that EPA intends to consider in future risk evaluations associated with conditions of use that also bear mention. The known, intended, and reasonably foreseen production of a chemical as a byproduct or the known presence of a chemical as an impurity or within an article, for example, are squarely ''conditions of use'' that generally must be included within the scope of risk evaluations.

Likewise, where EPA has reasonably available information demonstrating that certain exposures associated with a spill or leak are known or reasonably foreseen to occur during a condition of use that is part of a risk evaluation (*e.g.,* regular or predictable exposures from equipment leaks as part of the manufacturing process), EPA would expect to include that exposure within the scope of the risk evaluation. However, EPA would not expect to include within the scope of the risk evaluation exposures from releases of a chemical substance that are unsubstantiated, speculative or otherwise not likely to occur. For example, a future one-time accident involving the chemical substance that could be caused by an atypical one-time set of circumstances would generally not be assessed as part of a risk evaluation. Additionally, EPA would generally not include within the scope of the risk evaluation exposures associated with future extreme weather events (*e.g.,* hurricanes and wildfires). However, if information reasonably available to the Agency indicated that factors such as rising sea levels or extreme temperatures made worse by climate change were leading to regular and predictable changes in exposures associated with a given condition of use of a chemical substance, EPA would expect to consider those exposures within the scope of the risk evaluation. EPA requests comment on alternative proposals for considering potential climate-related risks. As discussed further in Units III.E.4. and III.I.2., EPA may adjust the level of refinement for a particular exposure assessment by conducting a ''fit-for-purpose'' assessment. While EPA will always apply the scientific standards required under TSCA, the depth or extent of analysis will be commensurate with the nature and significance of the decision. For example, EPA may find that the types of exposures described in this paragraph warrant consideration as part of an exposure assessment, either in a qualitative or a quantitative exposure assessment. Additionally, the Agency will decide the level of analysis warranted based on a number of factors, including but not limited to: the substance's physical-chemical properties; environmental fate and transport properties; the likely duration, intensity, frequency, and number of exposures under the condition of use; reasonably available information about the release; and other relevant considerations.

Even where a condition of use is not expected to be a significant contributor to risk from a particular chemical, TSCA nonetheless requires EPA to include it in the scope of the risk evaluation. However, and as described in Unit III.E.4., EPA has discretion to conduct its evaluations in a fit-for-purpose manner, which may justify tailoring the level of analyses to focus more detailed—and therefore more time and resource intensive—quantitative efforts on the conditions of use that pose the greatest potential for exposure and therefore risk.

3. Inclusion of All Exposure Pathways

In carrying out the first ten risk evaluations under TSCA, EPA narrowed the scope of those evaluations by excluding analysis of certain exposures to the general population from releases to air, water and land. The approach, which was not contemplated in the procedural framework rule but was first articulated in ''Problem Formulation'' documents published in 2018 (after the Final Scope documents) for each of the first ten chemicals undergoing risk evaluation, was premised on an argument that those pathways were already adequately assessed and managed—or could theoretically in the future be assessed and managed—under other EPA statutes and regulatory programs (Ref. 12). EPA further stated at that time that its intention was to use Agency resources efficiently under the TSCA program, avoid duplicating efforts taken pursuant to other Agency programs, maximize scientific and analytical efforts, and meet TSCA's statutory deadline for completing risk evaluations. In the final risk evaluations for the first ten chemicals, EPA excluded exposure pathways that could be covered by regulatory programs under the Clean Air Act (CAA), Clean Water Act (CWA), Safe Drinking Water Act (SDWA), Resource Conservation and Recovery Act (RCRA), and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (*e.g.,* drinking water pathways covered under the SDWA due to the existence of National Primary Drinking Water Regulations (NPDWRs) with chemical-specific, enforceable Maximum Contaminant Levels (MCL), or the inclusion of the chemical as an unregulated chemical on the Candidate Contaminant List (CCL)). EPA further asserted that this approach was supported by several TSCA authorities, including TSCA section 6(b)(4)(D), which gives the Agency authority to include the conditions of use that the Administrator ''expects to consider'' and section 9(b)(1), which allows Administrator to use other EPA administered statutes, if the Administrator determines there is risk to health or the environment (Ref. 13).

This approach was criticized by the Science Advisory Committee on Chemicals (SACC), public commenters, and others (Ref. 14, 15, 16). As announced on June 30, 2021, EPA will no longer follow the approach and no longer intends to apply it to risk evaluations. Additionally, the Agency applied the *Draft TSCA Screening Level Approach for Assessing Ambient Air and Water Exposures to Fenceline Communities Version 1.0* (Ref. 17) and additional feedback from peer review and public comment in order to consider whether its past failure to have assessed the risks associated with these exposures—along with its application of other past policies and interpretations—may have resulted in unaccounted potential risks. EPA has reconsidered the text of the relevant statutory provisions, overarching statutory structure and context, and legislative history, and no longer interprets the law to authorize exclusion of exposure pathways from the scope of TSCA risk evaluations because other EPA offices have already or could in the future regulate those chemicals. EPA's prior interpretation in support of that approach was premised in large part on the Agency's interpretation of TSCA section 6(b)(4)(D) as providing the discretionary authority to tailor the scope of exposures evaluated in TSCA risk evaluations. *See, e.g.,* Risk Evaluation for Methylene Chloride, sec. 1.4.2 (Ref. 13). For the reasons explained in Unit III.B., EPA no longer interprets TSCA section 6(b)(4)(D) to provide broad discretionary authority to exclude conditions of use or exposure pathways from the scope of TSCA risk evaluations.

EPA also cited TSCA section 9(b)(1) as support for its approach, asserting that the instruction in that provision for the Administrator to ''coordinate actions taken under [TSCA] with actions taken under other Federal laws administered [by EPA]'' provided a broad, freestanding authority to exclude from the scope of TSCA risk evaluations exposure pathways that are addressed or could in the future be addressed by other EPA-administered statutes and regulatory programs. *See, e.g.,* Risk Evaluation for Methylene Chloride, section 1.4.2 (Ref. 13). EPA asserted that such exclusions from TSCA risk evaluations were also permitted under the remaining text of TSCA section 9(b)(1), which establishes a process for determining whether to use EPA-administered authorities other than TSCA to protect against a risk ''[i]f the Administrator determines that a risk to health or the environment associated with a chemical substance or mixture could be eliminated or reduced to a sufficient extent by actions taken under the authorities contained in such other Federal laws.'' But upon reconsideration, neither provision in TSCA section 9(b)(1) is properly interpreted as authorizing exposure pathways to be excluded from TSCA risk evaluations.

Intra-agency coordination is integral to ensuring that EPA actions are well-informed, effective, and efficient, but a general requirement under TSCA section 9(b)(1) to ''coordinate actions'' cannot be read to displace the more specific requirements under TSCA section 6(b)(4)(F) to conduct a risk evaluation that shall ''integrate and assess available information on hazards and exposures for the conditions of use of the chemical substance,'' and ''take into account . . . the likely duration, intensity, frequency, and number of exposures under the conditions of use of the chemical substance.'' And the remaining text of TSCA section 9(b) is directed at risk management action, which cannot logically take place until after EPA has conducted an evaluation and determined that a risk is presented. If exposure pathways covered by other laws are not assessed in TSCA risk evaluations, it is unclear how the Administrator would have sufficient information to determine under TSCA section 9(b) that a risk to health or the environment associated with a chemical substance could be eliminated or reduced to a sufficient extent under another Federal law, or whether it is in the public interest to protect against such risk by actions taken under TSCA—a finding that must, pursuant to TSCA section 9(b)(2), consider ''all relevant aspects of the risk.'' Legislative history from TSCA's original 1976 enactment supports this understanding that TSCA section 9(b)—the text of which was at that time split between TSCA section 9(b) and TSCA section 6(c) (pertaining to risk management rulemaking procedures)—is properly interpreted in the context of risk management action rather than any preceding evaluation of risk (Ref. 18). As explained in the Conference Committee's 1976 report (Ref. 18) ''the requirement to examine other EPA laws and to make determinations applies only when the Administrator takes regulatory action to protect against an unreasonable risk under this Act.''

EPA recognizes that there may be exposure-reducing impacts from existing regulations and intends to

consider reasonably available information when estimating exposures, including available monitoring data. There may also be circumstances where an unreasonable risk identified in the risk evaluation may be eliminated or reduced to a sufficient extent under the authorities contained in other Federal laws, such that a referral under TSCA section 9 might be appropriate. However, the mere existence of authority to assess or regulate a chemical, exposure pathway, or use under a statute other than TSCA does not equate to effective risk management of that chemical, exposure pathway or use, and an assumption that risk will—or could be—managed in the future cannot be used to satisfy the Agency's statutory obligations to evaluate existing chemical substances under TSCA and manage identified risks. Wholesale exclusion of identified exposure pathways for a chemical substance from the scope of the TSCA risk evaluation for that substance is inconsistent with EPA's obligations under TSCA section 6(b)(4)(F), as noted, as well as with requirements under TSCA section 26(h), (i) and (k) to make decisions based on science that are consistent with the best available science and are based on the weight of the scientific evidence, and to take into consideration reasonably available information relating to a chemical substance, ''including . . . exposure information,'' under the conditions of use. Furthermore, TSCA section 9 already contemplates a time and place for determination of whether EPA or another Federal agency can adequately address chemical risks under the authority of another Federal law: during the risk management rulemaking process after the risk has been identified in a risk evaluation.

Accordingly, EPA is proposing changes in the rule to ensure that risk evaluations include all relevant exposure pathways, thereby providing the basis for development of strong, scientifically and legally defensible regulatory protections. Specifically, EPA is proposing to explicitly require that each risk evaluation assess all exposure routes and pathways relevant to the chemical substance under the conditions of use, including those that are regulated under other Federal statutes.

4. Comprehensive But Fit-For-Purpose

While the changes described in Unit III.E.1. through 3. could all lead to future TSCA risk evaluations that are more comprehensive in scope, EPA recognizes the enormity of the challenge to complete these responsibilities within the timeframes set forth by Congress. The law provides the Agency with only 3 to 3.5 years to finalize a TSCA risk evaluation. The primary purpose of a TSCA risk evaluation is to support regulatory decision making—either to form the basis of a subsequent rulemaking to eliminate identified unreasonable risk under TSCA section 6(a), or to determine that the chemical does not present unreasonable risk and therefore rulemaking is not necessary. Given the tens of thousands of existing chemicals, Congress further mandated that risk evaluations be completed on an ongoing basis and within specified timeframes.

Risk evaluations under TSCA should not be so complex or procedurally cumbersome that they cannot reliably be completed within the timeframes required by the statute. At the same time, EPA cannot produce partial or incomplete TSCA risk evaluations or otherwise pursue risk evaluations in a manner that is incompatible with the statutory framework. Although EPA must balance resource expenditure and manageability, it must do so within the confines of its statutory mandate. As such, EPA is proposing some changes to the rule to ensure consistency with TSCA's text, structure, and purpose, while also clarifying where the statute provides flexibilities in how EPA conducts TSCA risk evaluations. For example, the proposed rule makes clear that a risk evaluation must assess the full range of conditions of use and all exposure routes and pathways, and that a single risk determination will be made on the chemical substance, but these can be accomplished with a fit-for-purpose approach that allows for varying types and levels of analysis.

In order for TSCA implementation efforts to be sustainable, risk evaluations must be fit-for-purpose such that the Agency meets both the substantive statutory and regulatory requirements for conducting risk evaluations, while completing those evaluations within the statutory deadlines. (15 U.S.C. 2605(b)(4)). For example, while risk evaluations must consider the full spectrum of the chemical's conditions of use, not all of those conditions of use will warrant the same level of evaluation. As described in the 2017 final rule, EPA expects it may be able to complete its analysis on certain conditions of use and/or exposure pathways without extensive or quantitative evaluations of exposure. For example, lower-volume or less dispersive uses could receive less quantitative evaluations than uses with more extensive or complicated exposure patterns. In addition, not all identified toxicological endpoints may need the same level of analysis and consideration. Efficiencies may be gained in similarly tailoring approaches to peer review and/or systematic review. EPA can make scientifically sound risk determinations, considering reasonably available information, consistent with the best available science, and based on the weight of scientific evidence, through a combination of different types of information and risk assessment approaches. Ultimately, the proposed changes—TSCA risk evaluations that are both more comprehensive (*e.g.,* that consider all exposure pathways) and better incorporate fit-for-purpose approaches that ensure EPA is meeting its statutory deadlines—will lead to more scientifically sound and legally defensible risk evaluations that support robust TSCA section 6(a) risk management rules that address any unreasonable risks of injury to human health or the environment.

5. Additional Efficiencies

Based on the Agency's early implementation efforts and experience using the data gathering authorities afforded under the amended statute, it has become clear that EPA should identify, obtain, review, and synthesize data and information for risk evaluations much earlier in the TSCA existing chemical risk assessment and risk management process. Doing so will enable the Agency to finalize risk evaluations in the aggressive timeframes provided by the law, and as necessary, initiate risk management actions in a timely manner. EPA believes a more sustainable process would involve—either during prioritization or before—review of reasonably available information, identification of data needs and gaps, and preliminary efforts to scope the potential risk evaluation. Prioritization is the statutorily required initiating step in the TSCA existing chemical risk evaluation and risk management process. (15 U.S.C. 2605(b)). This 9- to 12-month process includes a risk-based screening to ultimately designate a chemical substance as a high-priority substance for risk evaluations or low-priority substance for which a risk evaluation is not warranted at the time. In the interest of creating additional efficiencies, EPA is proposing a process in which the Agency would publish and take comment during prioritization on preliminary information to inform the scope of the potential risk evaluation, which may result in the publication of the ''draft scope'' before the initiation of the subsequent risk evaluation.

More specifically, when early indications suggest the chemical is

likely to meet the criteria for a high-priority designation, EPA expects to publish the draft scope for public comment, to correspond with one of the two statutorily required 90-day comment periods associated with prioritization. Publishing this information early will allow the Agency to give an early indication as to the conditions of use, hazards, exposures and potentially exposed or susceptible subpopulations that the Agency expects to consider and may provide early indications as to how the Agency expects to conduct a fit-for-purpose risk evaluation. This information will accompany the prioritization screening review criteria, and EPA will look to public comment and submission of available relevant data to inform both the final priority designation but also, if the chemical is then designated as a high priority, the information to inform the scope.

As the first statutorily required step of the risk evaluation process, TSCA requires the Agency to publish the scope of the risk evaluation no later than 6 months after initiating the risk evaluation. (15 U.S.C. 2605(b)(4)(D)). This scope must include the hazards, exposures, conditions of use, and the potentially exposed or susceptible subpopulations the Administrator expects to consider. Under the 2017 final rule, however, EPA must publish the scope in a ''draft'' form, followed by no less than a 45-day public comment period. The 2017 final rule states that the Agency generally expects to publish this draft no later than 3 months after initiation of the risk evaluation. Stakeholders supported this provision during the development of the 2017 proposed rule; due to the gravity of the ''final'' scope on the risk evaluation process and possible state preemption, it was important for stakeholders to have the ability to comment on the draft scope. The proposed rule would maintain the requirement to publish a draft scope but set forth an expectation to publish the information as early as the prioritization process (*e.g.,* concurrent with the proposed high-priority designation), to allow the Agency more time to review and effectively use the public input in the development of the risk evaluation's scope. EPA requests comment on this proposed approach of publishing a draft scope during the prioritization process when it is clear that the chemical undergoing the prioritization process will be designated as a high-priority chemical.

F. Risk Determinations

1. Determinations on the ''Chemical Substance''

EPA is proposing to clarify the regulations with respect to the way EPA makes a risk determination at the conclusion of the TSCA risk evaluation process. As described earlier, EPA believes, as supported by the plain language in the law, that the chemical's full spectrum of conditions of use must be included and assessed in the risk evaluation. EPA fully intends to continue to consider exposures associated with each condition of use. However, following that analysis, and for the reasons described in this Unit, the Agency no longer intends to make separate risk determinations for individual conditions of use. Instead, EPA is proposing changes to the regulations to clarify and codify the approach that the Agency originally proposed in the 2017 proposed rule (*i.e.,* to make a single risk determination on the whole chemical substance). EPA believes that this approach is consistent with the statutory text and structure, as well as Congressional intent, and will enable the Agency's risk determinations to better reflect the potential for combined exposures across multiple conditions of use.

In the 2017 proposed rule, EPA proposed that risk determinations be made on the ''chemical substance,'' consistent with the plain language of the law and Agency's interpretation of the new requirements in TSCA at that time. (Ref. 9 at pp. 7572, 7565 through 7566, and 7580). As described in the preamble, ''TSCA section 6(b)(4)(A) specifies that a risk evaluation must determine whether 'a chemical substance' presents an unreasonable risk of injury to health or the environment 'under the conditions of use.' The evaluation is on the chemical substance—not individual conditions of use—and it must be based on 'the conditions of use.' ''. Thus, in the 2017 proposed regulatory text, EPA proposed to determine whether the chemical substance presents an unreasonable risk of injury to health or the environment under the conditions of use. (Ref. 9 at p. 7480).

The 2017 proposed rule provided an exception that would allow EPA to make an ''early determination'' for a specific use that was deemed to present unreasonable risk. Where such an early determination was made, the risk management efforts to address that specific use could begin more expeditiously and not wait until the end of the 3 to 3.5 year risk evaluation process (Ref. 8 at pp. 7568 and 7578). EPA did not propose a similar process for use-specific early determinations of no unreasonable risk. This exception made logical sense, in that, if a specific use of a chemical—in isolation—presented an unreasonable risk under TSCA, that chemical itself would necessarily present an unreasonable risk irrespective of risks posed by other uses. The converse may not be true. Where a specific use might not present an ''unreasonable risk'' on its own, it may nonetheless contribute to an unreasonable risk determination when considered together with other uses of the chemical (*e.g.,* when considering it in an aggregate exposure scenario).

EPA received comment on the 2017 proposed rule that limiting ''early determinations'' only to uses that present unreasonable risk was unfair, and encouraged the Agency to extend this concept of early, use-specific risk determinations to those uses determined not to present unreasonable risk. The 2017 final rule stated that ''EPA will determine whether the chemical substance presents an unreasonable risk of injury to health or the environment under each condition of uses [sic] within the scope of the risk evaluation, either in a single decision document or in multiple decision documents'' (Ref. 1). There was one particular passage in the preamble to the 2017 final rule which stated that EPA would make individual risk determinations for all conditions of use identified in the scope. (Ref. 1 at p. 33744).

Concerns about a use-specific approach to risk determinations were raised as part of litigation on the final rule in *Safer Chemicals* v. *EPA* (Ref. 2 at p. 413), including that such an approach ignores the potential risks when the same individuals are exposed to the same chemical through multiple conditions of use (*e.g.,* in the workplace and in the home). Those exposures, when combined, may present unreasonable risk, whereas, when viewed in isolation, may not. A panel of the Ninth Circuit Court of Appeals recognized the ambiguity of the regulation on this point, and ultimately held that a challenge regarding ''use-by-use risk evaluations [was] not justiciable because it is not clear, due to the ambiguous text of the Risk Evaluation Rule, whether the Agency will actually conduct risk evaluations in the manner Petitioners fear'' (Ref. 2 at p. 413). Subsequent to the Ninth Circuit's decision, EPA made individual risk determinations for each condition of use evaluated in the first ten risk evaluations (*i.e.,* the condition of use-specific approach to risk determinations). That approach was

based on the particular passage in the preamble to the 2017 final rule stating that EPA would make individual risk determinations for all conditions of use identified in the scope. (Ref. 1 at p. 33744). The approach resulted in a mix of findings that certain conditions of use for a chemical ''present unreasonable risk'' while others ''do not present unreasonable risk.''

As announced in June 2021 as the path forward for the first ten risk evaluations, EPA has revisited this decision and determined to revise the use-specific risk determinations for most of the first ten chemicals to reflect a single determination on the chemical substance itself (Ref. 7). These revisions did not require the Agency to change any of its underlying analyses in the risk evaluations. In the case of many of these first 10 chemicals, EPA had already determined that many or most of the individual conditions of use presented an unreasonable risk.

In revising the risk determinations for the first 10 chemicals, EPA noted that in contrast to the portion of the preamble of the 2017 final rule that discusses the intent of the Agency to make multiple risk determinations, the regulatory text itself and other statements in the preamble reference a risk determination *for the chemical substance* under its conditions of use, rather than separate risk determinations for each of the conditions of use of a chemical substance. See for example, the revised risk determination for Methylene Chloride (Ref. 13). Notwithstanding the one preambular statement about condition of use-specific risk determinations, the preamble to the 2017 final rule also contains support for a risk determination on the chemical substance as a whole.

Although the Agency indicated in its June 2021 announcement that it would make a single risk determination on a chemical when it was ''clear that majority of conditions of use warrant one determination,'' EPA now believes a better understanding of the statute is that a single determination on the chemical substance is required in every instance, and is proposing to make this clear in this procedural rule. TSCA section 6(b)(4)(A) specifies that in a risk evaluation, EPA must determine whether ''a chemical substance'' presents an unreasonable risk of injury to health or the environment ''under the conditions of use.'' This language clarifies that the risk determination is on the chemical substance—not individual conditions of use—and it must be based on ''the conditions of use.''

Although EPA previously found ambiguity in TSCA section 6(b)(4)(A), it now believes that a better reading of the statute in light of its content and structure (and other reasons described in this paragraph) is that it requires EPA to simultaneously evaluate all conditions of use of a chemical substance. TSCA section 6(a) requires EPA to apply risk-management requirements ''to the extent necessary so that the chemical substance or mixture no longer presents such risk.'' This phrasing suggests that the chemical substance presents the unreasonable risk, and not specific conditions of use. Further, TSCA section 6(i)(1) explains that ''a determination by the Administrator under subsection (b)(4)(A) that a chemical substance does not present an unreasonable risk of injury to health or the environment shall be issued by order and considered to be a final agency action, effective beginning on the date of issuance of the order.'' Similarly, TSCA section 6(i)(2) explains that ''a final rule promulgated under subsection (a), including the associated determination by the Administrator under subsection (b)(4)(A) that a chemical substance presents an unreasonable risk of injury to health or the environment, shall be . . . a final agency action, effective beginning on the date of promulgation of the final rule.'' Both of these provisions speak in terms of whether the chemical substance presents unreasonable risk. Neither provision mentions the conditions of use. The structure of TSCA section 6(i) also implies a binary decision by not addressing a scenario in which a chemical substance would be subject to TSCA section 6(i)(1) *and* (2).

EPA's view that there should be one determination on the chemical substance is further bolstered by TSCA's preemption provisions at Section 18, and its numerous references to ''chemical substance.'' In TSCA section 18(a)(1)(B)—titled ''Chemical substances found not to present an unreasonable risk or restricted''—the law states that preemption applies, for example, when EPA issues ''the determination'' in TSCA section 6(i)(1) (*i.e.,* a determination that the chemical substance does not present an unreasonable risk). EPA notes in particular that the word ''determination'' in this provision is singular, suggesting Congress did not envision multiple determinations under TSCA section 6(i)(1). Additionally, TSCA section 18(a)(1)(B)(ii) states that permanent preemption is triggered by a final TSCA section 6(a) risk management rule for ''the chemical substance,'' suggesting again that Congress did not envision that TSCA section 6(a) risk management rules would address only risks presented by individual uses or some subset of a chemical's uses, but rather unreasonable risk presented by the chemical as a whole.

Based on its text and structure, EPA now reads TSCA as requiring the Agency, in each risk evaluation, to make a single risk determination of the chemical substance. EPA does not believe that the statutory text and structure permit the Agency to make separate risk determinations for each condition of use. The legislative history also tends to favor this reading, including Congressional floor statements made on the day of passage supporting the risk determination being for the chemical substance. ''. . . EPA's understanding of a chemical's conditions of use . . . will be critical to EPA's final determination of whether a chemical is safe or presents an unreasonable risk that must be controlled'' and S3520 ''A Section 6(i) order, determining that a chemical substance does not present an unreasonable risk under conditions of use, is similarly final Agency action applicable to all those conditions of use that were identified in the scope of EPA's risk evaluation on the chemical substance'').'' (Ref. 11).

Although the Agency has previously referred to this as a ''whole chemical'' approach, this descriptor may have created some confusion regarding the Agency's intent and purpose. EPA believes that a more accurate description of the approach is simply one where the Agency makes its risk determination for the chemical substance. A determination that a chemical substance presents an unreasonable risk does not mean that the entirety or whole of that chemical's uses—or even a majority of uses—presents an unreasonable risk. Rather, EPA may determine that a chemical substance presents an unreasonable risk based on risk associated with even a single condition of use.

Some have criticized this approach in public comments on the revised risk determinations. They have noted, for example, that a singular risk determination could create confusion as to whether all uses or only certain uses of a chemical pose unreasonable risk. Fundamentally, EPA believes these concerns are risk communication issues that the Agency can and intends to continue to improve on. EPA will in every risk evaluation provide a rationale and explanation as to which conditions

of use or exposure pathways are significant contributors to risk. The Agency is committed to clearly communicating on the Agency's analysis of particular uses within the risk evaluation and will not make statements about the risk associated with the chemical substance absent such explanation. Rather, as indicated in the proposed regulatory text at 40 CFR 702.37(a)(5), and in order to inform risk management requirements, EPA generally expects every risk determination to identify which conditions of use are—or are not—significant contributors to EPA's determination that the risk presented is unreasonable. That said, for those chemical substances that EPA determines present unreasonable risk, the risk evaluation is not the end of the TSCA process. The primary purpose of a risk evaluation is not to provide the public with guidance or suggested actions with respect to particular chemical uses. Risk evaluations are scientific documents intended to inform EPA decisions as to whether regulatory action is needed to address unreasonable risks to human health or the environment. Ultimately, when the TSCA existing chemicals review process—including any TSCA section 6(a) rulemaking to manage risk—is complete, the public should have full confidence that the chemical can only be manufactured, processed, distributed in commerce, used and disposed of in accordance with the associated risk management requirements, and that the chemical substance no longer presents an unreasonable risk.

Likewise, others have expressed concern that EPA will use a singular risk determination to regulate in an overly broad manner. A determination of unreasonable risk for a chemical substance does not mean that EPA will, by default, propose or finalize a section 6(a) risk management rule requiring all manufacture or use of the chemical substance to be banned. EPA's statutory authority to regulate chemicals under TSCA section 6 is available only ''to the extent necessary so that the chemical substance or mixture no longer presents [unreasonable] risk.'' (15 U.S.C. 2605(a)). EPA has a range of authorities available under TSCA section 6(a) to address unreasonable risk, including—but not limited to—requiring additional occupational safety measures, product labels, or concentration limits. Where such measures can eliminate unreasonable risk, EPA may propose them as part of the risk management rulemaking process. EPA's determination of appropriate regulatory requirements will be on a case-by-case basis, and will not regulate chemical substances in a manner that is inconsistent with the requirements of TSCA sections 6(a) and (c)(2). For example, EPA may derive an exposure limit in the risk evaluation. Such a limit would necessarily be based solely on risk-related information, adhering to the statutory directive not to consider costs or other non-risk factors during the risk evaluation. However, because EPA is required to consider costs and other non-risk factors during the risk management phase, including whether uses of a substance are critical to Federal mission needs, or whether alternatives for a use of a substance exist, the exposure limit presented in a risk evaluation may not always or automatically signal the manner in which EPA will regulate occupational risks during the risk management phase.

It is important to note, however, in exercising EPA's authority under TSCA section 6(a) to ensure that ''the chemical substance . . . no longer presents such risk,'' EPA may regulate conditions of use that do not themselves contribute to unreasonable risk for a given chemical. For example, where a risk evaluation's underlying analysis suggests that particular use downstream in the supply chain is significantly contributing to unreasonable risk determination for the chemical substance, EPA's risk management actions need not apply only to the downstream use. EPA may, for example, determine that elimination of the unreasonable risk requires regulation of the chemical's upstream manufacture, processing or distribution in commerce—even where the upstream activity itself does not directly result in the exposures that present the unreasonable risk.

EPA considered whether to re-propose a process for making use-specific early determinations of unreasonable risk prior to completing the risk evaluation for the remaining conditions of use, as contemplated in the original 2017 proposed rule. However, based on experience in conducting risk evaluations on the first 10 chemicals and implementing the new requirements in TSCA section 6, the notion of early, use-specific risk determinations is not practical or realistic within the statutory deadlines. The theoretical benefit of such an approach—enabling the early start of risk management efforts for the subset of uses that are clearly of highest risk—is outweighed by the burdens of managing the completion of multiple risk evaluation processes on a single chemical followed by potentially multiple rulemakings, each of which must comply with statutory deadlines. In the event that there is a known, imminent and unreasonable risk of serious or widespread injury to health or the environment (*i.e.,* imminent hazard) associated with a use or chemical that the Agency needs to address immediately, TSCA section 7 provides EPA the authority to take such immediate action.

EPA believes the approach, consistent with the 2017 proposed rule, (*i.e.,* to make a single risk determination on the chemical substance) is aligned with the statutory text and structure, and will ensure that the Agency is best positioned to incorporate reasonably available information, make determinations consistent with the best available science and based on the weight of scientific evidence, including, where appropriate, risk determinations that consider aggregate exposure resulting from multiple conditions of use. (15 U.S.C. 2625(h), (i), and (k)). As such, EPA is proposing that risk evaluations will always culminate in a single risk determination on the ''chemical substance'' instead of individual risk determinations on individual conditions of use. EPA is proposing related conforming changes throughout the regulatory text, including the proposed addition of 702.37(a)(5) and the explicit mention of a single determination in 702.39(f)(1).

2. ''Unreasonable Risk'' Considerations

TSCA requires that a risk evaluation include a determination of whether or not a chemical presents unreasonable risk, and further requires that this determination be independent of cost or other non-risk factors. (15 U.S.C. 2506(b)(4)(A) and (F)(iii)). Neither TSCA nor the 2017 final rule define ''unreasonable risk'' given the inherently unique nature of each risk evaluation and the need for EPA to make this determination on a case-by-case basis. As described in the preamble to the 2017 final rule (Ref. 1 at p. 33735), EPA may weigh a variety of factors in determining unreasonable risk. The Administrator will consider relevant factors including, but not limited to: The effects of the chemical substance on health and human exposure to such substance under the conditions of use (including cancer and non-cancer risks); the effects of the chemical substance on the environment and environmental exposure under the conditions of use; the population exposed (including any susceptible subpopulations), the severity of hazard (the nature of the hazard, the irreversibility of hazard), and uncertainties.

The 2016 amendments also required that EPA's determination of unreasonable risk consider the risks to potentially exposed or susceptible subpopulations. Where EPA identifies risks as part of the risk evaluation, the risks to a potentially exposed or susceptible population may be more significant or severe than the risks to the general population. EPA would more explicitly reflect this statutory requirement in proposed § 702.39(f), as the 2017 final rule did not explicitly reference the statutory requirement to consider the risk to potentially exposed or susceptible subpopulations when making the final risk determination. Additionally, as discussed more fully in Unit III.G.4., the proposed rule clarifies that ''overburdened communities'' are one example of a group that may be considered as potentially exposed or susceptible subpopulations within a given risk evaluation. ''Overburdened communities'' may include various populations or communities in the United States that potentially experience disproportionate environmental harms and risks or multiple burdens from chemical exposure. The proposed change clarifies that EPA will consider the risk to potentially exposed or susceptible subpopulations as part of its determination of whether or not the chemical presents unreasonable risk.

Likewise, and as discussed further in Units III.G.2. and 3., EPA's determination of unreasonable risk from the chemical substance will also consider, where relevant, the Agency's analyses on aggregate exposures and cumulative risk. For example, where a single population is exposed to a chemical through multiple routes or pathways, EPA's assessment of those aggregate exposures may inform the determination of whether that chemical presents an unreasonable risk. Similarly, a cumulative risk assessment may be conducted on a category of chemicals, where the science supports this type of assessment, and the findings may inform the unreasonable risk determination for the category.

G. Risk Evaluation Considerations

1. Occupational Exposure Assumptions

EPA is proposing some clarifications to the assumptions that it will and will not apply in risk evaluations related to worker exposure.

In carrying out the first ten TSCA chemical risk evaluations, as part of the unreasonable risk determinations, EPA assumed that workers were provided and always used personal protective equipment (PPE) in a manner that achieves the stated assigned protection factor (APF) for respiratory protection, or used impervious gloves for dermal protection. In support of this assumption, EPA relied on public comments indicating that some employers, particularly in the industrial setting, provide PPE to their employees and follow established worker protection standards (*e.g.,* OSHA requirements for protection of workers). As EPA noted in prior risk evaluations (*e.g., Risk Evaluation for Methylene Chloride (Dichloromethane, DCM*), 126 (Ref. 13 at p. 126), the consideration of assumed use of PPE in a risk determination could lead to an underestimation of the risk to workers. Further, parties in litigation as well as public commenters on several TSCA risk evaluations argued that making risk determinations based on assumptions of PPE conflates the risk evaluation and risk management phases. In June 2021, the Agency announced it would be revisiting the risk determinations that were based on these assumptions and noted its plans to consider information on use of PPE and other ways industry protects its workers during the risk management process (Ref. 7).

TSCA requires that EPA evaluate the chemical substance under the intended, known, or reasonably foreseen circumstances associated with the chemical's manufacture, processing, distribution in commerce, use and disposal. EPA believes that the blanket occupational exposure assumptions on PPE do not reflect the known or reasonably foreseen chemical exposures that impact workers, and their continued application in TSCA risk evaluations would result in underestimates of risk. For example, workers may be highly exposed because they are not covered by Occupational Safety and Health Administration (OSHA) standards, their employers are out of compliance with OSHA standards, or because the PPE is not sufficient to address the risk or their PPE does not fit or function properly. Further, many of OSHA's chemical-specific permissible exposure limits were largely adopted in the 1970s and have not been updated since they were established (Ref. 19). Additionally, TSCA risk evaluations are subject to statutory science standards, an explicit requirement to consider risks to potentially exposed or susceptible subpopulations, and a prohibition on considering costs and other non-risk factors when determining whether a chemical presents an unreasonable risk that warrants regulatory actions—all requirements that do not apply to development of OSHA regulations. As such, EPA may find unreasonable risk for purposes of TSCA notwithstanding OSHA requirements. Where risk evaluations assume fully protective PPE use, and therefore little or no exposures for workers, the risk evaluations may underestimate and/or fail to identify unreasonable risk. EPA is requesting public comment on how the Agency can provide a transparent and detailed basis for the proposed unreasonable risk determination and existing chemical exposure limits derived from the risk evaluation process.

EPA is not suggesting that there is widespread non-compliance with applicable OSHA standards. In fact, EPA has received public comments from industry in response to various EPA documents associated with TSCA risk evaluations about occupational safety practices currently in use at their facilities, including adherence to OSHA standards and non-OSHA industry guidelines. EPA also acknowledges that other Federal agencies and their contractors that use chemicals may similarly have well-established occupational control measures in place. EPA will consider comments received during the risk evaluation process, as well as other information on use of PPE and other ways industry and Federal agencies protect their workers, as potential ways to address unreasonable risk during the risk management process. EPA recognizes that in some instances and in certain workplace locations, particularly advanced manufacturing facilities (*e.g.,* those involved in the aerospace and defense industrial base industrial sectors) there could be well-established occupational safety protections in place. As EPA moves forward with risk management rules, the Agency will strive for consistency with existing OSHA requirements and/or best industry practices when those measures would address the identified unreasonable risk and would adopt a similar approach when making decisions about managing risks for uses of chemicals that are required to meet national security and critical infrastructure mission imperatives for other Federal agencies. EPA will proactively communicate with Federal agencies to identify such circumstances with an aim to propose measures in the risk management process to address occupational risk that will meet TSCA's statutory requirement to eliminate unreasonable risk of injury to health and the environment, while also leveraging ongoing interagency dialogue and striving to avoid potential

impacts to mission and infrastructure critical uses.

EPA is proposing regulatory amendments to clarify that, in future risk evaluations, EPA's consideration of occupational exposure scenarios in the exposure assessments will take into account reasonably available information, including information regarding known and reasonably foreseen circumstances where subpopulations of workers are exposed due to absence or ineffective use of personal protective equipment. The EPA intends to assess and include in the risk evaluation the use of PPE, any engineering controls, and other industrial hygiene practices at industrial, commercial, and Federal facilities. Where information is made available, the Agency will take into account known occupational control measures in the exposure assessments. However, the Agency will not consider, as part of the unreasonable risk determination, exposure reduction based on assumed use of PPE by workers. For purposes of the risk determination at § 702.39(f)(2), EPA would distinguish between an ''assumed'' use of PPE and a use that is supported by the reasonably available information and therefore known to be inherent in the performance of an activity. For example, where EPA has reasonably available information that substantiates use and effectiveness of PPE (*e.g.,* information demonstrating that performance of a condition of use is impossible in the absence of PPE), EPA generally expects to take that information into account in the risk determination. The exposure reduction information (*e.g.,* use of PPE) from the risk evaluation's exposure assessment would then be considered and incorporated in a future risk management action, as appropriate and as required pursuant to TSCA section 6(a), and we encourage commenters with interests or concerns on this to offer comments on this point in connection with such a future action.

2. Aggregate Exposure

Pursuant to TSCA section 6(b)(4)(F)(ii), when conducting a risk evaluation, EPA must ''describe whether aggregate or sentinel exposures to a chemical substance under the conditions of use were considered, and the basis for that consideration.'' While there is no mandate to conduct aggregate exposure analyses, EPA may conduct aggregate exposure analyses at its discretion. In the 2017 final rule EPA defined aggregate exposure as ''the combined exposures to an individual from a single chemical substance across multiple routes and across multiple pathways.'' In this proposed rule, EPA is proposing slight revisions to the definition. Aggregate exposure analysis is not only used to assess exposure to an individual, but may also be used to assess exposure for a population, subpopulation or the environment. Thus, EPA is proposing to strike ''to an individual'' from the definition, which is consistent with the definition used in *General Principles for Performing Aggregate Exposure and Risk Assessments* (Ref. 20). Additionally, EPA is proposing to strike ''single'' chemical, as TSCA allows the Agency to conduct risk evaluations on categories of chemicals.

The consideration of an aggregate exposure assessment may be particularly important for assessing chemical risks to overburdened communities. If a community is exposed to a chemical substance through multiple routes and/or pathways (*e.g.,* exposure via air, land, and water or exposure via drinking water and water recreation) and/or from multiple sources (*e.g.,* through different conditions of use occurring at multiple facilities), the Agency has the authority to aggregate those exposures, subject to the best available science standard, per TSCA section 26(h). Not only does the Agency have the authority, but in developing a comprehensive risk estimate for a chemical substance, it is the Agency's responsibility to consider the aggregation of what may be lower individual exposures from individual conditions of use and routes of exposure. EPA is committed to conducting an aggregate assessment, as supported by the science, in future TSCA risk evaluations. In an aggregate exposure assessment, it may be appropriate to also consider potential background exposures from non-TSCA uses that are not within the scope of the risk evaluation. EPA could also consider the disproportionate impacts that background exposures may have on overburdened communities to inform the final unreasonable risk determination.

3. Cumulative Risk

Advancing the science to support cumulative risk assessment is a high priority for the Agency. Cumulative risk assessment is applicable to all lifestages, and could inform the Agency's efforts to understand and mitigate those risks to potentially exposed or susceptible subpopulations, including children and overburdened communities. Several reports from the National Research Council (NRC)—including the 1994 report Science and Judgment in Risk Assessment (Ref. 21) the 2008 report Phthalates and Cumulative Risk Assessment: The Tasks Ahead (Ref. 22), and the 2009 report Science and Decisions: Advancing Risk Assessment (Ref. 23)—have highlighted the importance of understanding the combined risk from multiple chemical stressors. These reports, as well as statutory requirements such as those presented in the Food Quality Protection Act of 1996 (Ref. 24), have helped drive EPA's evolving work on cumulative risk assessment. Because individuals are co-exposed to many chemicals in their daily lives, some of which may have the same health effects, EPA believes that in some cases the best approach to assess risk to human health may be to look at the combined risk to health from multiple chemicals.

Although TSCA does not mandate that EPA must conduct cumulative risk assessments, TSCA does require that EPA, when conducting TSCA risk evaluations in 3 to 3.5 years (15 U.S.C. 2605(b)(4)(G)), consider the reasonably available information, consistent with the best available science, and make decisions based on the weight of the scientific evidence (15 U.S.C. 2625(h), (i), and (k)). EPA recognizes that for some chemical substances undergoing risk evaluation, the best available science may indicate that the development of a cumulative risk assessment is appropriate to ensure that risk to human health and the environment is adequately characterized. TSCA also gives the Agency the authority to consider the combined risk from multiple chemical substances or a category of chemical substances. (15 U.S.C. 2625(c)). Under TSCA section 26(c), EPA may take ''any action authorized'' under any provision of TSCA, in accordance with that provision with respect to a category of chemical substances or mixtures of chemical substances. TSCA defines ''category of chemical substances'' as a group of chemical substances the members of which are similar in molecular structure, in physical, chemical, or biological properties, in use, or in mode of entrance into the human body or into the environment, or the members of which are in some other way suitable for the classification as such for purposes of [TSCA].'' (15 U.S.C. 2625(c)). This definition provides EPA with the flexibility to group chemical substances for inclusion in a risk evaluation and a cumulative risk assessment when supported by the best available science.

There are multiple definitions of the term ''cumulative risk assessment.'' For TSCA risk evaluations, the Agency is

currently relying on the definition in *EPA's Framework for Cumulative Risk Assessment* that defines cumulative risk assessment as ''an analysis, characterization, and possible quantification of the combined risks to health and/or the environment from multiple agents and/or stressors'' (Ref. 25). This could include evaluation of multiple chemical substances that jointly exert a common toxic effect. Exposures to these chemicals could occur through multiple exposure pathways and through multiple routes of exposure. EPA expects to use available EPA (Refs. 26, 27, 28, 29), OECD (Ref. 30), and World Health Organization/International Programme on Chemical Safety (WHO/IPCS) (Ref. 31) guidances that outline two principal considerations for grouping chemicals for inclusion in a cumulative risk assessment: (1) Toxicologic similarity; and (2) Evidence of co-exposure over a relevant timeframe.

A risk evaluation on a single chemical may not accurately provide a complete understanding of the risks to an exposed population, given simultaneous exposure to multiple chemicals. In turn, without considering the cumulative risk of chemicals, the Agency's risk mitigation may not fully be able to consider the public-health implications of various risk management options for reducing exposure. EPA is committed to considering applying cumulative risk assessment approaches, as appropriate and where such analysis, based on reasonably available information, represents the best available science, for future chemicals undergoing risk evaluation. The Agency developed and released a *Draft Proposed Principles of Cumulative Risk Assessment Under the Toxic Substances Control Act* (Ref. 32) and *Draft Proposed Approach for Cumulative Risk Assessment of High-Priority Phthalates and a Manufacturer Requested Phthalate Under the Toxic Substances Control Act* (Ref. 33) for public comment and peer review in February 2023. The Agency is considering feedback from both stakeholders and peer reviewers and EPA will continue to develop robust methodology for the inclusion of cumulative risk assessment in TSCA risk evaluations. EPA seeks comment on how the Agency could incorporate provisions for cumulative risk assessment into our risk evaluation procedures in a way that would accommodate future advancements in the science of cumulative risk assessment as well as ensure that the scope and complexity of any such assessments is consistent with that envisioned by Congress when it established deadlines for conducting risk evaluations.

As described in Unit III.G.4., TSCA also explicitly requires EPA's risk evaluations to consider unreasonable risk to ''potentially exposed or susceptible subpopulations,'' and the statute provides authority to consider non-chemical as well as chemical stressors when identifying these subpopulations. Non-chemical stressors are factors found in the built, natural, and social environments including physical factors (*e.g.,* geographic location) and psychosocial factors (*e.g.,* poor nutrition) (Ref. 34). EPA's Office of Research and Development has defined cumulative impacts as the totality of exposures to combinations of chemical and non-chemical stressors and their effects on health, well-being, and quality of life outcomes (Ref. 34) and may or may not include toxicologically defined risk. EPA has not to date considered cumulative impacts in TSCA risk evaluations, but may in the future as appropriate data, methods, and guidance are available.

4. Potentially Exposed or Susceptible Subpopulations

TSCA requires EPA to evaluate risk to ''potentially exposed or susceptible subpopulation[s]'' identified as relevant to the risk evaluation by the Administrator, under the conditions of use. (15 U.S.C. 2605(b)(4)(A)). TSCA defines the term as ''a group of individuals within the general population identified by the EPA who, due to either greater susceptibility or greater exposure, may be at greater risk than the general population of adverse health effects from exposure to a chemical substance or mixture, such as infants, children, pregnant women, workers, or the elderly.'' (15 U.S.C. 2602(12)). TSCA does not further define ''greater susceptibility'' or ''greater exposure,'' giving the Agency discretion to interpret these terms. Greater susceptibility could include increased risk of experiencing an adverse effect due to one's lifestage or a pre-existing condition or circumstance (*e.g.,* immune-compromised conditions, lifestyle factors such as smoking status or alcohol abuse, age, ethnicity, or sex). This is consistent with EPA's Policy on Children's Health to protect children from environmental exposures by consistently and explicitly considering early life exposures and lifelong health in all human health decisions. The Agency will use its discretion and interpret ''greater exposure'' to potentially include fenceline communities (*e.g.,* those communities in close proximity to facilities emitting air pollutants or living near effluent releases to water) or body burden. Additionally, Congress' inclusion of ''such as'' allows EPA to potentially identify communities who ''may be at greater risk than the general population.'' Thus, EPA may evaluate any subpopulation that may be at greater risk due to greater susceptibility or exposure, and identify additional subpopulations other than those examples listed in the statute, where warranted.

To ensure that the TSCA risk evaluations conducted for existing chemicals fully consider and evaluate the risks to these vulnerable communities, EPA is proposing to amend the regulatory definition of ''potentially exposed or susceptible subpopulations.'' Specifically, EPA is proposing to add ''overburdened communities''—communities that may be disproportionately exposed or impacted by environmental harms—to the list of example subpopulations. The disproportionality can be as a result of greater vulnerability to environmental hazards, lack of opportunity for public participation, or other factors. Increased vulnerability may be attributable to an accumulation of negative or lack of positive environmental, health, economic, or social conditions within these populations or places. The term describes situations where multiple factors, including both environmental and socio-economic stressors, may act cumulatively to impact health and the environment and contribute to persistent environmental health disparities. These situations may apply to communities with environmental justice concerns.

EPA's 2017 proposed rule proposed a definition of PESS that included more examples of PESS than set forth by Congress in the statutory definition. EPA did not finalize that definition as proposed. In response to public comments, the Agency explained that ''it would be difficult for the Agency to list all the potential subpopulations that the Agency might have reason to include in a risk evaluation'' and that EPA did not want to imply exclusion of other subpopulations. However, EPA now believes that it is appropriate to propose the addition of ''overburdened communities'' to the definition of PESS because it reflects the Agency's understanding and acknowledgment that exposure to a chemical substance may disproportionately impact communities already experiencing disproportionate and adverse human health or environmental burdens. Nothing in TSCA or this proposed rule

would prevent the Agency from identifying another group or subpopulation as a ''potentially exposed or susceptible subpopulation'' in a given TSCA risk evaluation and specifically considering those exposures and risks within.

To identify overburdened communities when conducting a risk evaluation, EPA will engage the public throughout the TSCA prioritization and risk evaluation processes, work with EPA offices such as the Office of Environmental Justice and External Civil Rights and the Office of Research and Development, and may use available screening tools, such as EJSCREEN (Ref. 35) or EnviroAtlas (Ref. 36). These and other tools may also allow the Agency to capture greater susceptibility or greater exposure using the data layers for socioeconomic factors (*e.g.,* income/poverty, education) or location (*e.g.,* housing, employment, geography), and for environmental indicators (*e.g.,* air toxics cancer risk, respiratory hazard index, particulate matter levels, ozone, Superfund site proximity, hazardous waste proximity, proximity to multiple chemical manufacturing or processing facilities), which may provide information for future cumulative assessment. EPA also continues to develop approaches for assessing the risk to overburdened communities. For example, in 2022 EPA submitted for peer review the *Screening Level Approach for Assessing Ambient Air and Water Exposures to Fenceline Communities* (Ref 16). This proposed screening level methodology evaluated the potential chemical exposures and associated potential risks to fenceline communities, or communities in close proximity, and thus commonly at greater exposure, to chemical emission sources. The Agency continues to develop risk evaluation approaches to help determine risk from all relevant exposure pathways with an emphasis on exposures to these commonly overburdened communities.

H. Science Policy and Scientific Standards

1. Scientific Guidelines and Procedures

Congress recognized the importance of Agency policies, procedures and guidance necessary to facilitate implementation of the 2016 amendments to TSCA. (15 U.S.C. 2625(l)(1)). This proposed rule, as does the 2017 final rule, codifies the use of appropriate Agency guidance in the development of risk evaluations (proposed § 702.37(a)(1)). Agency guidance and methodology documents, which may include publicly available handbooks, frameworks, protocols, or any other process support documents have long provided process and method transparency to Agency scientific work products. The appropriateness of the documents relates to their application in the methods, approaches, and science policy decisions used in TSCA risk evaluations. For example, the *Exposure Factors Handbook: 2011 Edition* (Ref. 10), provides exposure assessors inside the Agency as well as outside, with data on standard factors to calculate human exposure to environmental agents. Other EPA guidance and methodology documents provide background for the development of the TSCA risk evaluations, specifically the *EPA Guidelines for Carcinogen Risk Assessment* (Ref. 37), and the *EPA Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens* (Ref. 38). EPA will continue to use these and other existing Agency guidances in the development of TSCA risk evaluations. EPA may develop and use additional guidance as needed using a transparent process.

2. Peer Review

Science is the foundation that supports the work of EPA, and this is equally true for TSCA risk evaluations. The quality and integrity of the science are vital to the credibility of the Agency's decisions and processes, including but not limited to the evaluation of risks from chemicals, determination of whether a chemical presents an unreasonable risk, decisions on how best to manage that risk, and ultimately the Agency's effectiveness in pursuing its mission to protect human health and the environment. One important element in ensuring that decisions are consistent with the best available science and based on the weight of scientific evidence is to have an open, transparent and independent scientific peer review process along with opportunities for public comment.

EPA has a long-standing history of peer review and has shown its commitment to peer review in the TSCA program. TSCA section 26(o) required EPA to establish an advisory committee, known as the Science Advisory Committee on Chemicals (SACC), to provide independent advice and expert consultation with respect to the scientific and technical aspects of issues relating to the implementation of TSCA. EPA expects to continue to obtain scientific advice and peer review from the SACC. The 2017 final rule explicitly required peer review to be conducted on all risk evaluations, which the Agency did for each of the first ten risk evaluations (Ref. 8). Reports from those peer review committees proved extremely instructive and resulted in more robust and scientifically defensible products and improvements to EPA methods used in the risk evaluation process.

The Agency remains committed to using peer review in the development of TSCA risk evaluations and any associated methods or approach type documents and proposes to retain the provision to require peer review in the risk evaluation process. However, EPA is proposing some modifications to the language from the 2017 final rule to provide increased clarity on both the guidance the Agency will use to conduct peer review and on what peer review will be conducted. First, the Agency proposes removing the reference to specific versions of guidance documents. The 2017 final rule names specifically the *EPA Peer Review Handbook 4th Edition 2015* (Ref. 39) and OMB's *Information Quality Bulletin for Peer Review* (Ref. 40). While at the time of this proposed rule these documents were and still are applicable, the Agency recognizes that these documents may be updated and/or their names modified and seeks to avoid confusion as to which guidance documents will be used. The Agency proposes at § 702.41 to refer instead to ''applicable peer review policies, procedures, guidance documents, and methods adopted by EPA and the Office of Management and Budget (OMB) to serve as the guidance for peer review activities. EPA interprets ''applicable'' to reference the most current versions and believes this change will appropriately incorporate any future versions of peer review guidance documents from both the Agency and OMB (*i.e.,* the EPA Peer Review Handbook and OMB Final Information Quality Bulletin for Peer Review).

The peer review guidance documents discussed in this Unit III.H.2., as well as their predecessors, provide guidance on all aspects of the peer review process. This includes guidance on when to conduct peer review and on what should be considered in selecting the appropriate peer review approach, including allowable latitude for the type of peer review that EPA can conduct. In determining the appropriate type of peer review, EPA can consider the complexity of the information and any prior peer review of underlying information. EPA has previously used this flexibility in the TSCA program and sought a letter peer review, as opposed to, for instance, a committee established under the Federal Advisory Committee Act (FACA) (5 U.S.C. 10), to peer review new and updated information used in

the revised draft risk evaluation for Pigment Violet 29 (Ref. 41).

The Agency fully intends to uphold the EPA Peer Review Policy Statement, which states in part, ''. . . For highly influential scientific assessments, external peer review is the expected procedure. For influential scientific information intended to support important decisions, or for work products that have special importance in their own right, external peer review is the approach of choice . . .'' However, as discussed in the *EPA Peer Review Handbook 4th Edition,* there are circumstances when the additional peer review of influential products that have had adequate prior peer review may not be necessary (Ref. 39). As the Agency looks to the future of TSCA risk evaluations, it is expected that specific approaches may be used repeatedly, after due consideration of complexity, novelty, and prior peer review. That is, there may be situations when repeated peer review is not warranted.

For example, EPA did not peer review the *2020 1,4-Dioxane; Supplemental Analysis to the Draft TSCA Risk Evaluation* (Ref. 42). In response to peer review of the draft risk evaluation for 1,4-dioxane, published in September 2019 (Ref. 43), members of the SACC, as well as public commenters, highlighted omissions in the draft evaluation, specifically 1,4-dioxane exposures as a byproduct in products and general population exposure from the surface water pathway. As a result, those conditions of use from the presence of 1,4-dioxane as a byproduct in consumer use were included in the scope of a supplemental analysis to the draft risk evaluation. In that situation, because the analytical approaches to assessing the unreasonable risk associated with these conditions of use mirrored those approaches used for the conditions of use evaluated in the peer reviewed September 2019 draft risk evaluation and there was not new or novel scientific information to consider, the Agency determined that additional peer review was not warranted, but sought public comment on the supplemental analysis.

EPA believes that future risk evaluations and associated analyses may present similar circumstances for EPA's consideration. Rather than peer reviewing an entire risk evaluation, in adhering to applicable guidance, it may be appropriate for EPA to conduct peer review on only portions or sections that constitute unreviewed influential information. EPA also expects that a TSCA risk evaluation may use peer reviewed products (*e.g.,* risk assessments, hazard assessments, models), or portions thereof, conducted by another EPA office or other authoritative body (*e.g.,* state, national, or international programs), for which both the best available science and weight of scientific evidence standards were adhered to (see Unit III.I.1.). EPA's Peer Review Handbook specifically references circumstances that may not necessitate additional peer review including ''work that has been previously reviewed in a manner consistent with the OMB Peer Review [Bulletin] and EPA's Peer Review Handbook'' (Ref. 39). Thus, this portion or section of a TSCA assessment may not need additional peer review. To this end, EPA proposes to add clarity around what will be peer reviewed. The 2017 final rule stated that ''the risk evaluation'' will be peer reviewed. The proposed regulatory text at § 702.41 provides EPA's expectation that peer review activities could be conducted on risk evaluations ''or portions thereof.'' EPA believes this provides the needed flexibility to conserve Agency resources and avoid redundant peer review. EPA requests comments on the proposed changes with respect to peer review, including whether the proposed addition of ''or portions thereof'' is consistent with OMB and Agency guidance.

Consistent with the 2017 proposed and final rules, EPA will not seek peer review of any determination as to whether the risk is ''unreasonable,'' which is an Agency policy determination. Consistent with OMB and EPA guidance, the purpose of peer review is the independent review of the science underlying the TSCA risk assessment not an evaluation of EPA's policy determinations. TSCA expressly reserves to the Agency the final determination of whether risk posed by a chemical substance is ''unreasonable.'' (15 U.S.C. 2605(i)). This is consistent with the statutory purpose of the SACC, ''to provide independent advice and expert consultation, at the request of the Administrator, with respect to the scientific and technical aspects of issues relating to the implementation of this title'' (15 U.S.C. 2625(o)(2)).

I. Scientific Standards

TSCA section 6(h) and (i) require the Agency to make decisions under TSCA section 6 in a manner that is consistent with the best available science and based on the weight of scientific evidence. Specifically, TSCA section 26(h) requires that in carrying out TSCA sections 4, 5, and 6, to the extent the Agency makes decisions based on science, the Agency shall ''use scientific information, technical procedures, measures, methods, protocols, methodologies, or models, employed in a manner consistent with the best available science.'' The statute then lists considerations: (1) The extent to which the scientific information, technical procedures, measures, methods, protocols, methodologies, or models employed to generate the information are reasonable for and consistent with the intended use of the information; (2) The extent to which the information is relevant for the Administrator's use in making a decision about a chemical substance or mixture; (3) The degree of clarity and completeness with which the data, assumptions, methods, quality assurance, and analyses employed to generate the information are documented; (4) The extent to which the variability and uncertainty in the information, or in the procedures, measures, methods, protocols, methodologies, or models, are evaluated and characterized; and (5) The extent of independent verification or peer review of the information or of the procedures, measures, methods, protocols, methodologies or models. Section 26(i) states ''the Administrator shall make decisions under sections 4, 5, and 6 based on the weight of scientific evidence.'' TSCA does not define either ''best available science'' or ''weight of scientific evidence'' and there is no requirement in the statute to define them by rule. Codification of definitions has potentially broader impacts beyond TSCA section 6 risk evaluations and rules, including TSCA sections 4 and 5 actions, and potentially other applications outside of TSCA.

EPA received significant comment about the codification of definitions for these terms during the development of the 2017 proposed rule (Ref. 1 and Ref. 44). Some commenters noted that it is imperative that the Agency have specific criteria which would allow for consistency and transparency for how EPA will implement science. Others argued that since interested persons may submit risk assessments to the Agency for consideration (under TSCA section 26(l)(5)), it is necessary for the Agency to provide a standard and expectation. Many commenters noted that there are a number of ways the Agency could and has defined these terms across other statutory obligations and suggested this could be both a reason to codify TSCA-specific definitions, or to not codify them to avoid future limitations in implementation approaches. Others have argued that the risk evaluation rule should be reserved for process and procedure, and that codification of

specific process definitions would limit the Agency's ability to adapt to the changing science of risk evaluation, as well as the science that informs risk evaluation. Further, some argued that defining the terms would limit the flexibility afforded the Agency, and arguably the mandate, to implement and advance novel science.

EPA determined not to propose codifying definitions of either of these terms in the 2017 proposed rule (Ref. 9 at p. 7572), citing the need to remain flexible to changing science and approaches. The Agency argued at that time that further defining these terms was unnecessary and ultimately problematic. EPA noted that these terms have and will continue to evolve with changing scientific methods and innovation, and Agency guidance does and will provide the necessary description and processes to ensure consistency and transparency (Ref. 9 at p. 7572). Ultimately, EPA did codify definitions for both of these terms in the final rule, explaining that codification of these definitions would instill confidence, increase transparency, predictability, and provide the public with assurance that EPA will adhere to the requirements of the statute (Ref. 1 at p. 33731). EPA is proposing to eliminate the following definitions from the regulatory text for the reasons described in Units III.H.1. and 2.

1. Best Available Science

In the 2017 final risk evaluation rule, the Agency defined best available science as science that is reliable and unbiased, and described the use of best available science as involving the use of supporting studies conducted in accordance with sound and objective science practices, including, when available, peer reviewed science and supporting studies and data collected by accepted methods or best available methods (if the reliability of the method and the nature of the decision justifies use of the data). The definition also identified other considerations as applicable, including the extent to which:

- The scientific information, technical procedures, measures, methods, protocols, methodologies, or models employed to generate the information are reasonable for and consistent with the intended use of the information;
- The information is relevant for the Administrator's use in making a decision about a chemical substance or mixture;
- The degree of clarity and completeness with which the data, assumptions, methods, quality assurance, and analyses employed to generate the information are documented;
- The variability and uncertainty in the information, or in the procedures, measures, methods, protocols, methodologies, or models, are evaluated and characterized; and
- There is independent verification or peer review of the information or of the procedures, measures, methods, protocols, methodologies or models.

In general, EPA continues to believe this current definition of ''best available science'' is aligned with the Agency's views and the science requirements in TSCA section 26(h). The first part of this definition originated from the Safe Drinking Water Act (SDWA) (42 U.S.C. 300f *et seq.*) (Ref. 45), and second part of the definition is drawn verbatim from the considerations listed in TSCA section 26(h)(1) through (5). SDWA adopted a basic standard of quality for the use of science in agency decision making. Under 42 U.S.C. 300g–1(b)(3)(A), the Agency is directed, ''to the degree that an Agency action is based on science,'' to use ''(i) the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices; and (ii) data collected by accepted methods or best available methods (if the reliability of the method and the nature of the decision justifies use of the data).'' The mandate to use the best available science with considerations enumerated in TSCA section 26(h) closely mirrors these requirements. Specifically, TSCA section 26(h)(5) refers to verified and peer reviewed science and scientific methods, and TSCA sections 26(h)(1) though (4) refer to the important considerations for the Agency when identifying and using data in a risk evaluation. This further comports with SDWA's quality standard for the dissemination of public information about risks of adverse health effects (42 U.S.C. 300g–1(b)(3)(B)).

The precedent-setting standards in SDWA are further discussed in the OMB Information Quality Guidelines. These guidelines ''provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies'' (Pub. L. 106–554; 114 Stat. 2763A–153 through 2763A–154). The *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity, of Information Disseminated by the Environmental Protection Agency* (Ref. 46, also referred to as EPA's Information Quality Guidelines) contain EPA's policy and procedural guidance for ensuring and maximizing the quality of information disseminated in Agency work products. Section 6.4 of EPA's Information Quality Guidelines discuss how the Agency ensures and maximizes the quality of information used in risk assessment and specifically adopts the SDWA quality principles. EPA's Information Quality Guidelines go on to say: ''In applying these principles, 'best available' usually refers to the availability at the time an assessment is made. However, EPA also recognizes that scientific knowledge about chemical risk is rapidly changing and that risk information may need to be updated over time.'' In general, EPA believes the SDWA definition of ''best available science'' and the associated guidelines and policies are all aligned with the science requirements enumerated in TSCA section 26(h).

However, EPA believes that codifying a definition of ''best available science'' in the Risk Evaluation procedural rule is unnecessary and potentially problematic as it could limit the Agency's ability, flexibility, and mandate to incorporate the best available science into TSCA risk evaluations. As such, EPA is proposing to eliminate the definition of ''best available science'' from § 702.33. EPA specifically requests public comment on the proposed elimination of the definitions, the need for such definitions, and the utility of definitions as the state of science evolves. As discussed previously, EPA believes the specifics of that definition are already reflected in the TSCA requirements and considerations for applying the best available science in section 26(h), and in the Agency's policies and procedural guidance. These considerations are also replicated in the proposed regulatory text at § 702.37(a)(2). The Agency does not believe codifying a definition of ''best available science'' provides any additional transparency or improves consistency.

Furthermore, while the use and consideration of ''best available science'' is discussed at length in both EPA and other Federal agency guidance documents, the definition is not codified in other Agency rulemakings. EPA believes that a specific definition should not be codified in this rulemaking. Under proposed § 702.37(a)(1), the Agency would use appropriate Agency guidance in the development of the TSCA risk evaluations. TSCA section 26(l) requires the Agency to use and develop guidance documents that are necessary in carrying out the statute. TSCA further requires the revisions of guidance

documents as necessary to ''reflect new scientific developments and understandings.'' Reliance on Agency guidance for determining the ''best available science'' in TSCA risk evaluations ensures the desired transparency and consistency, while still allowing for more nimble adaptation over time.

As the Agency identifies reasonably available information to inform a TSCA risk evaluation of a given chemical, EPA may consider existing risk assessments, or reviews performed on the chemical in question to be the best available science. This may include assessments conducted by EPA that adhere to existing Agency Guidance, use methodologies that have been externally peer reviewed, and undergo public comment. Similarly, the Agency may also look to consider assessments or portions of assessments conducted by other United States or international authoritative bodies. EPA may consider these existing assessments or reviews to represent the best available science as required under TSCA and use portions of them to directly inform a risk evaluation.

2. Systematic Review and Fit-for-Purpose Systematic Approaches

The 2017 final risk evaluation rule defined weight of scientific evidence (WOSE) as used in TSCA to include the use of a ''systematic review method'' with a ''pre-established protocol'' to ''identify and evaluate each stream of evidence.'' In turn, in implementation of this regulatory requirement, EPA has previously viewed this definition as requiring the Agency to conduct systematic review according to a protocol on each evidence stream. The first method used was the 2018 *Application of Systematic Review in TSCA Risk Evaluations* (Ref. 47). This method was reviewed by the National Academies of Science, Engineering, and Medicine (NASEM) and the study report published in 2021, *The Use of Systematic Review in EPA's Toxic Substances Control Act Risk Evaluations* (Ref. 48), included several opportunities and recommendations to improve EPA's systematic review process. In response to recommendations made by the NASEM, as well as comments received from the TSCA SACC and the public during the review of the first ten risk evaluations, EPA significantly updated the TSCA systematic review process and developed a systematic review protocol. The draft *TSCA Systematic Review Protocol* (Ref. 49) replaced the *Application of Systematic Review in TSCA Risk Evaluations.* As described in Unit III.I.3., EPA is proposing changes to the WOSE definition to ensure that the concepts and principles of systematic review and WOSE are used in the evaluation of existing chemicals and are appropriately considered separately.

TSCA risk evaluations use reasonably available information to draw the conclusions that are supported by the best available science. Reasonably available information is identified and evaluated through unbiased, transparent and objective data collection and data evaluation, using systematic review methods. EPA believes that integrating appropriate and applicable systematic review methods and approaches into the TSCA risk evaluations are critical to meet the scientific standards as described in TSCA section 26(h). A systematic review approach to data collection and data evaluation provides more complete information than an informal or unstructured review and can reduce bias in data selection (Ref. 49). The principles of systematic review collection and evaluation of data and information have been well developed in the context of evidence-based medicine (*e.g.,* evaluating efficacy in clinical trials) and more recently have been adapted for use across a more diverse array of scientific fields. A 2014 report by the National Research Council (NRC) describes systematic review as ''a scientific investigation that focuses on a specific question and uses explicit, pre-specified scientific methods to identify, select, assess, and summarize the findings of similar but separate studies'' (Ref. 50). There are also well-established principles of systematic review like ''transparent and explicitly documented methods, consistent and critical evaluation of all relevant literature, application of a standardized approach for grading the strength of evidence, and clear and consistent summative language'' (Ref. 50). Systematic review includes performing—as described and documented in a protocol—a methodical literature search, collection and screening, followed by data quality evaluation (addressing factors such as relevancy and bias), extraction, and integration, using a defined protocol, that can be applied across multiple lines of evidence. Any systemic approach EPA uses will follow this process.

The TSCA program will also continue to work with partners including EPA's Office of Research and Development (ORD), the Office of Pesticide Programs, and the Office of Water (OW) to advance and implement tools, methods, and efficiencies to systematically collect and evaluate literature. The procedures required for ensuring objectivity, transparency and no bias in the collection and review of data for TSCA risk evaluations must be flexible enough to account for the diversity of both hazard and exposure information necessary to inform TSCA risk evaluations, and implementable within the statutory deadlines. EPA will continue to develop and evolve its systematic approaches to data collection and evaluation for use in TSCA risk evaluations to meet these goals. EPA will continue to use the principles and tools outlined in the draft *TSCA Systematic Review Protocol* (Ref. 49), but the Agency will move to implement more chemical specific approaches that are more flexible and relevant for the types and quantity of information used in an individual risk evaluation. As such, systemic review approaches must be commensurate with the relevant complexity of the assessment and nature of the information available, and carried out in a manner that permits completion within the timeframes that Congress provided. EPA will look to streamline chemical-specific protocols and approaches while remaining consistent with systematic review principles. These systematic approaches will be transparent, fit-for-purpose, and specific to the needs of each chemical/category, while better aligning with the schedules for completion of the risk evaluation. The Agency is also exploring how to leverage consideration of systematic reviews and systematic review approaches from other EPA offices and authoritative bodies, or portions thereof, to achieve greater efficiencies in the process. Ultimately, application of systematic review and/or systematic approaches are necessary to help EPA identify useful evidence, inform judgments as to the ''best available science'' and ''weight of scientific evidence'' (WOSE), and can transparently support risk evaluations that are both scientifically robust and defensible.

3. Weight of Scientific Evidence

In the 2017 Final Rule, EPA defined the WOSE as ''a systematic review method, applied in a manner suited to the nature of the evidence or decision, that uses a pre-established protocol to comprehensively, objectively, transparently, and consistently identify and evaluate each stream of evidence, including strengths, limitations, and relevance of each study and to integrate evidence as necessary and appropriate based upon strengths, limitations, and relevance.'' 40 CFR 702.33. The Agency believes this definition is problematic and inconsistent with typical risk assessment practice and is therefore proposing to eliminate the definition

from the regulatory text—instead relying on long-established Agency guidance documents to guide weight of scientific evidence analyses under TSCA.

The 2017 final rule conflates WOSE (also referred to as weight of evidence (WOE)) and systematic review. This conflation was identified and best described by NASEM's review of EPA's publication titled *Application of Systematic Review in TSCA Risk Evaluations* (Ref. 47). In their study report, *The Use of Systematic Review in EPA's Toxic Substances Control Act Risk Evaluations* (Ref. 48), the NASEM reviewers state ''this definition of WOE seems to say that the TSCA systematic review is itself a WOE evaluation. As such, the agency's legal obligation to conduct a WOE evaluation is fulfilled by the fact that systematic review is the basis for TSCA evaluations.'' The NASEM Committee goes further describing the confusion that results when the WOSE is used at one stage of the systematic review process to integrate the strength of the evidence judgment for each individual evidence stream into an overall conclusion for a health endpoint, whereas under the WOSE definition, the systematic review process itself is a weight of scientific evidence evaluation (Ref. 48). Throughout the report, the Committee notes the conflation of terms and goes on to suggest that changing the definition of WOSE within the risk evaluation procedural rule may alleviate the terminology confusion (Ref. 48).

In developing this proposed rule, the Agency reviewed several alternative definitions or descriptions of WOSE or WOE. It is clear there are certain principles of WOSE that are universal, including foundational considerations such as objectivity and transparency. The phrase WOSE or WOE is used by EPA and other scientific bodies to describe the strength of the scientific inferences that can be drawn from a given body of evidence, specifically referring to the quality of the studies evaluated, and how findings are assessed and integrated. EPA broadly uses the WOSE approach in many existing programs and has described the application of WOSE in Agency guidelines used to classify carcinogens. In the 2005 *Guidelines for Carcinogen Risk Assessment* (Ref. 37), EPA refers to the WOE approach as ''. . . a collective evaluation of all pertinent information so that the full impact of biological plausibility and coherence is adequately considered.'' The Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC) referred to the WOE approach as ''. . . a process by which trained professionals judge the strengths and weaknesses of a collection of information to render an overall conclusion that may not be evident from consideration of the individual data'' (Ref. 51). EPA believes WOSE inherently involves application of professional judgment, in which the significant issues, strengths, limitations of the data, uncertainties, and interpretations are presented and highlighted.

As noted by the National Academies of Science, ''because scientific evidence used in WOE evaluations varies greatly among chemicals and other hazardous agents in type, quantity, and quality, it is not possible to describe the WOE evaluation in other than relatively general terms'' (Ref. 23). EPA does not believe that even an alternative codified definition would add additional transparency or certainty to the required use of WOSE in TSCA risk evaluations. Additionally, the Agency believes that codifying a specific definition would inhibit the flexibility of the Agency to quickly adopt and implement changing science to ensure that each risk evaluation is fit-for-purpose to the chemical under review. As such, EPA is proposing to remove the current codified definition of weight of scientific evidence. The Agency welcomes comment on this approach.

EPA will instead rely on established Agency guidance documents to guide the required application of WOSE in TSCA risk evaluations. At this time, EPA will primarily look to four documents for implementing WOSE in TSCA risk evaluations: 2016 *Weight of Evidence in Ecological Assessment* (Ref. 52), *Guidelines for Carcinogen Risk Assessment* (Ref. 37), 2011 *Endocrine Disruptor Screening Program Weight-of-Evidence: Evaluating Results of EDSP Tier 1 Screening to Identify the Need for Tier 2 Testing* (Ref. 53), and 2022 *ORD Staff Handbook for Developing IRIS Assessments* (Ref. 54). These documents all similarly describe the WOSE assessment as based on the strengths, limitations, and interpretation of data available, information across multiples lines of evidence and how these different lines of evidence may or may not fit together in drawing conclusions. The results from the scientifically relevant published or publicly available peer-reviewed studies, gray literature, or any other studies or lines of evidence which are of sufficient quality and reliability, are evaluated across studies and endpoints into an overall assessment. WOSE assessments examine multiple lines of evidence considering a number of factors, including for example the nature of the effects within and across studies, including number, type, and severity/magnitude of effects and strengths and limitations of the information. A summary WOSE narrative or characterization accompanies the detailed analysis and is intended to transparently describe the conclusion(s) and reasoning behind it/them. Specifically, the narrative or characterization generally explains the selection of the studies or effects used as the main lines of evidence and relevant basis for conclusions, and describes the overall strength of the evidence supporting a conclusion from the WOSE assessment.

J. Process for EPA Revisions To Scope or Risk Evaluation Documents

EPA is proposing some new procedures and criteria for whether and how EPA would endeavor to revise or supplement final scope documents, and draft or final risk evaluations. The 2017 final rule does not provide any such criteria or procedures. The proposed procedures provide greater certainty and transparency for stakeholders. Additionally, given the tens of thousands of existing chemical substances in commerce and EPA's responsibility to assess and manage risks from those chemicals through a statutory deadline-driven pipeline of prioritization, risk evaluation and risk management activities, EPA believes that some guardrails are necessary to ensure that the Agency continues to make forward progress on existing chemicals as Congress intended. Continuously revisiting final risk evaluations would drain the Agency's already limited resources and divert attention from other chemicals actively in the prioritization, risk evaluation or risk management phases. The criteria and procedures in this proposed rule would serve the law's purpose to move chemicals through the process within the statutory deadlines, and allow the Agency to move on to evaluating another high-priority substance, consistent with TSCA section 6(b)(3)(C).

Specifically, with respect to final scope documents, EPA is proposing that subsequent changes—if any—to the scope of the risk evaluation after publication of the final scope be reflected and described in the draft risk evaluation instead of a revised final scope document. EPA believes that, moving forward, any changes to the scope of the risk evaluation after publication of a final scope document are likely to be minimal based on the improved processes proposed in this NPRM, and EPA's expected rulemaking to implement a tiered data collection strategy to better inform data needs for prioritization and risk evaluation

candidates (Ref 57). However, in the event that changes to the risk evaluation scope during that period are more significant, EPA recognizes that public notice of those changes might be warranted. The proposal contemplates that EPA could, in its discretion, publish a notice in the **Federal Register** notifying the public that EPA has made information regarding changes to the risk evaluation scope available in the docket before releasing the draft risk evaluation.

Likewise, EPA is proposing to refrain from reissuing draft risk evaluations in a second draft form. Draft documents are, by their nature, subject to change. Rather than spending time and resources to develop and issue a revised draft risk evaluation, EPA instead expects to reflect and describe any changes to the draft document in the final risk evaluation. Where changes from draft to final are significant in nature, nothing in the proposed rule would prevent EPA from seeking additional advice or feedback from its independent scientific advisors or additional public comment on relevant topics, provided that such actions can be completed within the timeframes Congress contemplated for TSCA risk evaluations. This proposed clarification to the Agency's process ensures that feedback is appropriately considered and reflected without unduly delaying progress towards completion of the risk evaluation.

EPA is proposing a general practice for how and when to revisit final risk evaluations, and certain exceptions to that practice. As general practice, where circumstances warrant revisiting a chemical risk evaluation that has already been finalized—which EPA believes are likely to be infrequent—the Agency may identify that chemical as a potential candidate for high-priority designation, and follow the procedures at 40 CFR part 702, subpart A. EPA believes that this general practice aligns with Congress' intent for the Agency to work systematically through the universe of existing chemicals within the statutory framework and aggressive deadlines associated with prioritization, risk evaluation and risk management. (15 U.S.C. 2605(b)(2)(C) and (b)(4)(G)). Revisiting risk evaluations outside of re-prioritizing the chemical substance results in unanticipated and potentially unbudgeted work that can siphon resources from statutorily mandated responsibilities under TSCA section 6. Conversely, re-prioritizing the chemical provides the public with ample notice and opportunity to engage, provides anticipatable milestones and process, and better positions the Agency to maintain a manageable workload.

Nevertheless, there may be certain circumstances where revisions to a final risk evaluation outside of re-prioritization of a chemical are in the interest of protecting human health and the environment. For example, as announced on June 30, 2021, EPA is revisiting the first 10 final risk evaluations to ensure they followed the science and EPA's renewed understanding of the law, and determined a path forward on a case-specific, chemical-by-chemical basis (Ref. 7). The outcome of those risk evaluations, which may have underestimated risks based on, among other things, policies of excluding certain conditions of use and entire exposure pathways from assessment, warranted this action. Although changes proposed in this NPRM should prevent the types of issues that justified reanalysis of the first ten chemical risk evaluations, the same principle—the need to revise a final risk evaluation to protect human health and the environment—might apply to, for example, a scientific error that meaningfully impacts the evaluation or the Agency's ability to appropriately address risks through rulemaking.

Where EPA endeavors to revise or supplement a final risk evaluation outside of re-prioritization, the proposed rule further requires EPA to follow the same process and requirements for TSCA risk evaluations described in this proposed rule, including publication of a new draft and final risk evaluation, solicitation of public comment, and, as appropriate, peer review.

K. Process and Requirements for Manufacturer-Requested Risk Evaluations

EPA is proposing a number of changes to the process and requirements for manufacturers to request a risk evaluation. TSCA section 6(b)(4)(C)(ii) allows a manufacturer or group of manufacturers to request that the Agency conduct a risk evaluation of a chemical substance (or category of substances) that they manufacture. TSCA section 6(b)(4)(C)(ii) directs EPA to establish the ''form . . . manner and . . . criteria'' for such requests by rule, which the Agency finalized in 2017. Based on experience in implementing that process to date, EPA is proposing some modifications to increase clarity and to better position the Agency to carry out manufacturer-requested risk evaluations (MRREs) moving forward.

The current process for MRREs, laid out in 40 CFR 702.37, has been challenging for EPA in a number of ways. First, the 2017 final rule allows requests to contain information relevant only to conditions of use of the chemical that are of interest to the requesting manufacturer (40 CFR 702.37(b)(3)). Within a relatively short time after receiving a request, EPA must either grant or deny the request (40 CFR 702.37(e)(6)). By ''granting'' an MRRE request under the current regulations, EPA is acknowledging that it has all the information it needs to conduct the evaluation, creating some ambiguity as to whether additional information can be gathered during the process, including through use of EPA's TSCA section 4 or 8 authorities. The process effectively leaves the Agency with the heavy burden of identifying the remaining conditions of use, reviewing information that came in with the request, obtaining and reviewing additional available literature, and determining any missing information or data needs—all within a matter of months. The current process also provides that upon granting the request, EPA will initiate the risk evaluation, triggering the start of the three-year statutory deadline to complete the activity (40 CFR 702.37(e)(10)).

EPA has found that this process is unrealistic. In addition to needing more fulsome information included in incoming requests, and additional time to properly review requests and determine any additional information needs prior to initiating the evaluation, EPA also needs some flexibility in the process to pursue data collection or development during the risk evaluation. In general, EPA believes that the process and timeframes for reviewing incoming MRRE requests should be more akin to the process and timeframes that precede EPA-initiated risk evaluations. When considering whether a chemical is a good potential candidate for prioritization—including the chemical's readiness for evaluation from a data perspective—EPA has a significant amount of time to review and analyze available information, identify data gaps and needs, and pursue various data gathering strategies. On top of that, the prioritization process itself provides an additional 9 to 12 months and two 90-day public comment periods to help the Agency refine its approach and deepen its understanding of the chemical—all before initiating the risk evaluation and the associated deadlines.

The proposed rule is intended to address these challenges. Units III.K.1. through 4. Describe the key proposed changes to the process for MRREs, and EPA's expectations for implementation moving forward:

1. Submission of MRRE

The law allows for submission of a MRRE by one or more manufacturers of a chemical substance, and both the current and proposed rule maintain that requirement as part of the regulatory text. However, in cases where multiple manufacturers jointly submit a MRRE (*i.e.,* a consortium), EPA expects to treat a consortium as a single entity for purposes of any regulatory determinations with regard to the requests, fee payments, and other general communication regarding the MRRE request and/or the risk evaluation. Joint submitters must designate a single point of contact for Agency engagement, and are otherwise collectively responsible for providing complete and sufficient information to the Agency to support the risk evaluation.

2. Scope of Request

Currently, the rule allows manufacturers to request a risk evaluation on particular conditions of use of interest, leaving the Agency with the heavy burden of identifying the remaining conditions of use. EPA is proposing that manufacturers only be permitted to make requests for evaluations of entire chemical substances—not individual conditions of use or subsets of conditions of use. In addition to better aligning with the statutory language in TSCA section 6(b)(4)(C) (stating that EPA ''shall conduct and publish risk evaluations . . . on a chemical substance . . .'') and the scope of EPA-initiated risk evaluations, EPA believes this clarification will also encourage more robust, well-crafted submissions and better position the Agency for success in carrying out the evaluations. EPA recognizes that a requesting manufacturer may not have access to all necessary information to support the risk evaluation, and, as described in Unit III.K.4, EPA is also proposing a process to address these shortcomings. However, the proposed clarification regarding scope—along with changes described in Unit III.K.3.—would ensure no misgivings about the scope of MRREs and the information needed to support those requests in order for the Agency to undertake a risk evaluation.

3. Contents of Request

EPA is also proposing some key changes to the supporting information that must be included in a MRRE request. As a general matter, EPA believes that the requesting manufacturer(s) should bear the primary burden of providing EPA with all information necessary to conduct a risk evaluation on the chemical substance. Congress also shared this sentiment in section 2 of TSCA, stating that ''adequate information should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such information should be the responsibility of those who manufacture and those who process such chemical substances and mixtures.'' 15 U.S.C. 2601(b). Within respect to MRRE requests, Congress authorized EPA to establish the ''form . . . manner and . . . criteria'' for such requests in order to support successful implementation. (15 U.S.C. 2605(b)(4)(C)). The 2017 final rule's allowance for the requesting manufacturer(s) to only provide supporting information relevant to their preferred conditions of use inappropriately shifts much of the information gathering burden to the Agency. Instead, EPA believes, as discussed in Unit III.K.2., based on TSCA's statutory text and structure, that MRRE requests should attempt to identify all intended, known and reasonably foreseen circumstances of the chemical's manufacture, processing, distribution in commerce, use and disposal, and provide all available information regarding the chemical's hazards and exposures—not just information of relevance to the submitter's interests. As such, EPA is proposing changes that would require more fulsome information as part of the request, based on information that is known to or reasonably ascertainable by the requesting manufacturer.

More specifically, EPA is proposing to require that manufacturers include a listing of the chemical's conditions of use (*i.e.,* the circumstances under which the chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of), and all information known to or reasonably ascertainable by the requesting manufacturer that supports the identification of those circumstances. While EPA must ultimately determine the chemical's conditions of use for purposes of the risk evaluation, this requirement ensures a reasonable level of due diligence on the part of the requesting manufacturer to gather available information and provide it to EPA. Similarly, EPA is also proposing that incoming requests include ''all information known to or reasonably ascertainable by the requesting manufacturer on the health and environmental hazard(s) of the chemical substance, human and environmental exposure(s), and exposed population(s).'' The proposed rule also provides some clarifications as to the specific types of information that must be included as part of the request. Under the 2017 final rule, requesting manufacturers are required to provide this information only where relevant to the particular uses of interest, leaving EPA with significant work not just to identify the remaining conditions of use, but also to locate and review available literature and quickly determine whether there is sufficient information to carry out a risk evaluation. The proposed changes put more of this responsibility on the requesting manufacturer. EPA believes that requesting manufacturers should be making a reasonable amount of effort to gather all available information on the chemical—whether that information is available to the general public, or otherwise available to the manufacturer—and compile it for the Agency's review as part of an MRRE.

Information that is known to or reasonably ascertainable by the manufacturer would include all information in a person's possession or control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know. The standard requires an exercise of due diligence, and the specific information-gathering activities that may be necessary for manufacturers to achieve this standard may vary from case-to-case. In the context of preparing a MRRE request and to meet the requirements in the proposed rule at § 702.45(c), EPA believes that due diligence would, at a minimum, involve a thorough search and collection of publicly available information on the chemical's hazards, exposures and conditions of use. EPA would further expect that requesting manufacturers conduct a reasonable inquiry not only within the full scope of their organization regarding manufacturing processes and products (including imports), but also outside of their organization to fill gaps in knowledge. For example, such activities might include inquiries to upstream suppliers or downstream users or employees or other agents of the manufacturer, including persons involved in the research and development, import or production, or marketing for information pertinent to the criteria listed in the proposed rule.

EPA nonetheless still anticipates that manufacturers may not be in a position to provide the Agency with all the information necessary to complete the risk evaluation. EPA received comments

on the original 2017 proposed rule, for example, that manufacturers who do not produce the chemical for a particular use may not be able to obtain information pertaining to that use. To address this issue, EPA is proposing a process described further in Unit III.K.4. to formalize how such shortcomings will be identified and addressed. In short, where the requesting manufacturer is unable to provide all the information EPA needs for risk evaluation, the requesting manufacturer can request EPA use its information collection authorities under TSCA sections 4 (require manufacturers (including importers) or processors to test chemicals and report their findings), 8 (require reporting on chemical manufacturing, processing, and use, or require the submission of unpublished chemical health and safety information from manufactures (including importers), processors, or distributors), or 11 (ability to inspect facilities where chemicals are manufactured, processed, stored, or held before or after their distribution in commerce), to fill in the gaps. Where the information need is identified after the risk evaluation has already been initiated, the requesting manufacturer must also suspend its request to allow sufficient time for the Agency to exercise those authorities. These changes set clearer expectations for what EPA needs to undertake in a risk evaluation, and establish a process for productive engagement with requesting manufacturers toward meeting those needs.

4. EPA Process for Reviewing Requests

EPA is proposing a number of changes to how the Agency will review MRREs. As described in this Unit, the current process simply does not allow enough time for thoughtful review of requests and consideration of potential information needs. As such, at § 702.45(e) of the regulatory text, EPA is proposing changes to the steps the Agency will take upon receipt of a MRRE, including additional measures for transparency and public engagement. The following is a general description of the proposed procedural steps:

Notice of Receipt. EPA will provide the public with notice within 15 days that a MRRE has been received. Although the proposed rule does not specify the means of notice, EPA expects to generally do so through updates to its website and email listserv notifications.

Initial Review for Completeness. EPA will then begin reviewing the request and supporting information against the requirements in the proposed rule to determine whether or not the request appears complete. Requests that are clearly missing key required information in § 702.45(c) or are otherwise not well-supported will be rejected and returned to the submitter as incomplete. For example, EPA would consider a request for evaluation of category of chemicals incomplete where the request does not provide a rationale as to why the categorization is appropriate under TSCA section 26(c). Likewise, where a request fails to describe the circumstances related to the full lifecycle of the chemical substance (*i.e.,* manufacture, processing, distribution in commerce, use and disposal) or to provide an explanation as to why such information is unavailable to the requestor, EPA may reject the request as incomplete. During this step, EPA may also make an initial judgment as to the quality or quantity of information provided by the requesting manufacturer(s) and the sufficiency of that information to support a risk evaluation. Where the information is generally of poor quality, or when very little information is provided, EPA may also reject the request.

This initial review step allows the Agency to screen incoming requests before advancing to the more time- and resource-intensive steps associated with reviewing a MRRE. Where EPA determines a request to be incomplete, the requesting manufacturer can simply supplement and resubmit the request. Where EPA initially determines the request to be complete, EPA will advance to the next step in the process: public notice and opportunity for comment.

Public Notice and Comment. Where EPA initially determines the request to be complete, EPA will submit a notice of receipt of the MRRE for publication in the **Federal Register** within 90 days. EPA will also open a docket that includes all non-CBI and CBI-sanitized information included in the request and provide no less than a 60-day public comment period. EPA may also solicit specific comments on the request, including feedback on the conditions of use listed by the manufacturer in the request and information regarding sufficiency of available information to support a risk evaluation.

Secondary Review for Sufficiency. From the start of the public comment period, EPA would expect to begin conducting a more in-depth review of the request to determine whether there is sufficient information to support a reasoned evaluation on the chemical substance. Concurrently, EPA expects to conduct an internal cursory review of other reasonably available information, however more comprehensive information collection would occur post-granting of the request. For EPA-initiated risk evaluations, EPA has clearly indicated that it would not expect to initiate the prioritization process until there is sufficient information to complete both the prioritization and risk evaluation processes. Likewise, EPA would not expect to grant an MRRE until confident that there is a similar level of information to support evaluation. As described in the proposed rule, EPA may determine that certain information gaps can be addressed through application of assumptions, uncertainty factors, models, and/or screening, consistent with TSCA section 26, without the need for additional data. EPA's review during this period would encompass both the information provided with the request and any additional relevant information that may be uniquely available to EPA (*e.g.,* TSCA CBI data that may not otherwise be known to or reasonably ascertainable by the requesting manufacturer). Following the close of the public comment period, EPA will further consider feedback from the public as to the sufficiency of available information. For example, if public comments indicate there are additional conditions of use, and the request does not identify or provide information relevant to those conditions of use, EPA may deem the request insufficient and return to the submitter for further consideration and possible supplementation.

EPA may also determine during this period whether there are deficiencies in the request, including data quality considerations, not identified during EPA's initial review for completeness. EPA's review for sufficiency will be completed within 90 days from the end of the public comment period. For requests determined not to be supported by sufficient information during this period, EPA will reject the request—effectively ending the Agency's review—and notify the requesting manufacturer. EPA generally expects to keep the public apprised of the status of requests through updates to its website. The requesting manufacturer would have the opportunity to further supplement and resubmit their request to EPA. Additionally, where the submitter believes that the information is not reasonably ascertainable by them, they can include in their resubmission a request—as described in this Unit—that EPA exercise its information gathering authorities to collect and/or develop information necessary to remedy the deficiency. For requests

determined to be supported by sufficient information, EPA will proceed with granting the request and continuing the review process.

Grant. As described elsewhere in this Unit III.K.4., and subject to the percentage limitations in TSCA section 6(b)(4)(E)(i)(II), EPA will grant MRRE requests that are both complete and supported by sufficient information. Under the 2017 final rule, a ''grant'' of a MRRE request effectively means that EPA has determined it has all information needed to conduct such risk evaluation. While EPA intends to make every effort to ensure sufficient information before granting a MRRE request, absolute certainty is not possible. Given the nature of risk assessment and public processes associated with TSCA risk evaluations, there may be occasion where EPA becomes aware of critical information needs later in the process. As such, the proposed rule specifically reserves the right for EPA to identify additional information needs for the risk evaluation at any time, including after granting the MRRE request.

Publication of Draft Conditions of Use and Request for Information. EPA will next publish a notice in the **Federal Register** that sets out, in draft form, the Agency's preliminary determination on the chemical's conditions of use, taking into account information provided in the MRRE request, information received during the first public comment period, and EPA's own further review efforts. This notice will request relevant information from the public, and provide no less than a 60-day public comment period. Given that a chemical's conditions of use are such an important component to define the scope of the risk evaluation, EPA felt it was important to share its understanding and provide an opportunity for additional feedback before formally initiating the MRRE. In the context of EPA-initiated risk evaluations, EPA expects this engagement to occur during the prioritization process, and, similarly, before the formal initiation of the risk evaluation and start of the statutory deadline for completion. Within 90 days following the close of the public comment period in this paragraph, and depending on the nature of comments received, EPA will either initiate the risk evaluation or notify the requesting manufacturer of any additional information needs.

Initiation of Risk Evaluation. Upon initiation of the MRRE, EPA will follow all requirements in this proposed rule including but not limited to proposed sections 702.37 through 702.49. EPA will notify the manufacturer that the MRRE has been initiated, and similarly expects to keep the public apprised of the status through updates to its website. As indicated previously, EPA is reserving the right to identify additional information needs at any time during the risk evaluation process, including post-initiation.

Identification of Information Needs. Where additional information needs are identified at any time before the MRRE has been granted, the proposed rule provides a clear process for supplementation and resubmittal of the request. However, where additional information needs are identified at any point following EPA's grant of the MRRE, EPA will notify the requesting manufacturer(s) and set a reasonable amount of time, as determined by EPA, for manufacturers to respond to the Agency's notice. In response to EPA's notice, the manufacturer can choose to (1) provide the necessary information to EPA, (2) if the risk evaluation has not yet been initiated, withdraw the MRRE request, or (3) request that EPA obtain the information using authorities under TSCA sections 4, 8 or 11.

Where a manufacturer chooses to provide—or develop and provide—the necessary information, EPA will set a reasonable amount of time for the requesting manufacturer to provide that information to EPA. Upon receipt of the new information, EPA will review the information within 90 days and determine whether or not it satisfies the identified need—again providing notice to the requesting manufacturer of its determination, and keeping the public apprised of the status of the MRRE on its website. EPA would further endeavor, to the extent possible, to make the supplemental information publicly available in the docket.

Alternatively, in the event the risk evaluation has not yet been initiated, the requesting manufacturer may withdraw the MRRE request. This option gives the requesting manufacturer some flexibility in the event that developing the necessary information would be considered too costly or time consuming. Any fees to be collected or refunded would be determined in accordance with this proposed rule and the TSCA fee provisions in 40 CFR 700.45. MRRE requests cannot be withdrawn by the requesting manufacturer once EPA has initiated the risk evaluation.

Lastly, where the requesting manufacturer believes that they can neither collect nor develop the identified information, they may request that EPA obtain the information using its authorities under TSCA sections 4, 8 or 11. As part of such a request, the manufacturer must provide a rationale as to why the information is not reasonably ascertainable to them. EPA will review the request and provide notice of its determination to the requesting manufacturer as to whether or not use of these authorities is warranted. Where EPA agrees to use its authorities, EPA will review the new information within 90 days of receipt and determine whether or not it satisfies the identified need—again providing notice to the requesting manufacturer and keeping the public apprised of the status of the MRRE on its website. EPA would further endeavor, to the extent possible, to make the supplemental information publicly available in the docket.

EPA recognizes that Congress clearly intended for those requesting MRREs to cover either 50% or 100% of the costs to carry out the risk evaluation. See 15 U.S.C. 2625(b)(4)(D). However, in the event that EPA exercises its authorities to gather additional necessary information, costs may be imposed upon entities other than the requesting manufacturer. For example, if EPA issues a test order under TSCA section 4 to support a MRRE, another entity could have to pay both the test order fee as well as the costs of developing the information. While the costs to EPA would be reflected in the final invoice to the requesting manufacturer, EPA is seeking comment on, to the extent that test orders are issued to support a MRRE, whether EPA should amend the regulation to allow the entire test order fee to be directed to the requesting manufacturer, even where an order is issued to another entity who is not the requesting manufacturer.

Unfulfilled Information Needs. EPA believes it is important that the procedures in this proposed rule account for a scenario in which information needs are not met, and the Agency is simply unable to complete the risk evaluation. In circumstances where EPA has identified additional data needs, but the requesting manufacturer(s) is unable or unwilling to fulfill those needs in a timely manner, has produced information that is insufficient to meet the need as determined by EPA, or where EPA determines that a request to use gather information under TSCA sections 4, 8 or 11 is not warranted (*e.g.,* where the information is ascertainable by the manufacturer or the request does not provide a sufficient rationale), the proposed rule at § 702.45(g) contemplates that EPA can deem the MRRE request to be constructively withdrawn (*i.e.,* EPA would construe

the MRRE request to be withdrawn even in the absence of a request to withdraw). Any fees to be collected or refunded would be determined in accordance with this proposed rule and the TSCA fee provisions in 40 CFR 700.45.

Fees for MRRE will generally be determined in accordance with 40 CFR 700.45. However, this proposed rule further specifies that in the event that a MRRE request is withdrawn after it has been granted—either by the requesting manufacturer or constructively withdrawn by EPA—the total fee amount due will be either, in accordance with 40 CFR 700.45(c)(2)(x) or (xi) (as applicable), 50% or 100% (respectively) of the actual costs expended in carrying out the risk evaluation as of the date of receipt of the withdrawal notice. The payment amount will be determined by EPA, and invoice or refund issued to the requesting manufacturer as appropriate.

IV. Requests for Comment

EPA requests comment on all aspects of the proposed rule discussed in this Unit III., including comment on whether the proposed rule would enhance transparency and public understanding of EPA's TSCA risk evaluation process and better align with the 2016 amendments to TSCA under the Frank R. Lautenberg Chemical Safety for the 21st Century Act (Pub. L. 114–182, 130 Stat. 448). Additionally, within this proposal, the Agency is soliciting feedback from the public on specific issues throughout this proposed rule. For ease of review, this section summarizes those specific requests for comment.

1. EPA requests comment on how the Agency could consider potential climate-related risks in a risk evaluation.

2. EPA requests comment on the proposed approach of publishing a draft scoped during the prioritization process when it is clear that the chemical undergoing the prioritization process will be designated as a high-priority chemical.

3. EPA requests public comment on the proposed elimination of the definitions of best available science and weight of scientific evidence, the need for such definitions, and the utility of definitions as the state of science evolves.

4. EPA requests comments on the proposed changes to the process of a manufacturer requested risk evaluation. In regards to cost, while the costs to EPA would be reflected in the final invoice to the requesting manufacturer, EPA is seeking comment on, to the extent that test orders are issued to support a MRRE, whether the entire test order fee should also be directed to the requesting manufacturer, even where the order is also issued to another entity. Additionally, EPA requests specific comment on the burden estimate of a manufacturer requested risk evaluation, including the assumptions used in estimating the burden (*e.g.,* number of requests EPA expects).

5. EPA requests comment on general approaches or best practices for improving engagement with small entities. Early engagement with and feedback from all those who manufacture, process, distribute, use or dispose of a chemical is critical for the Agency to be able to accurately identify and characterize that chemical's conditions of use for consideration in the risk evaluation, EPA is seeking comment on how to improve its outreach to the stakeholder community, including education on the TSCA risk evaluation process for small entities.

6. EPA requests public comment on how the Agency can provide a transparent and detailed basis for the proposed unreasonable risk determination and existing chemical exposure limits derived from the risk evaluation process.

V. Reliance Interests

The proposed rule includes some statutory interpretations that differ from those previously held by the Agency at the time it issued the 2017 final rule, and, as part of developing this proposed rule, EPA has considered to what extent stakeholders may have reliance interests in those previous interpretations. EPA believes that there are either no reliance interests on those past statutory interpretations, or that any such interests are minor. The current rule and proposed changes largely pertain to internal Agency procedures that guide the Agency's risk evaluation activities under TSCA and mostly do not directly impact external parties, with one exception being modified procedural requirements for voluntary requests for risk evaluation submitted by manufacturers. However, to the extent there were any reliance interests on the prior interpretations, or the risk evaluations that were developed based on the previous procedural requirements, nothing in the proposed rule is intended to apply retroactively. EPA does not believe stakeholders have reliance interests pertaining to the process for future, yet-to-be-completed risk evaluations that will be carried out in accordance with this proposed rule.

VI. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not itself physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Orders 12866: Regulatory Planning and Review and 14094: Modernizing Regulatory Review

This action is a ''significant regulatory action'' as defined in Executive Order 12866 (58 FR 51735, October 4, 1993), as amended by Executive Order 14094 (88 FR 21879, April 11, 2023). Accordingly, EPA submitted this action to the OMB for Executive Order 12866 review. Documentation of any changes made in response to the Executive Order 12866 review are documented in the docket. EPA prepared an analysis of the potential costs associated with this action. This analysis can be found in Unit VI.B.

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to OMB under the PRA, 44 U.S.C. 3501 *et seq.* EPA has prepared a new rule-related Information Collection Request (ICR) document entitled ''Procedures for Requesting a Chemical Risk Evaluation under TSCA (Proposed Rule)'' and is identified by EPA ICR No. 2781.01, to replace an existing approved ICR. You can find a copy of the new ICR document (Ref. 4) in the docket for this rulemaking, and it is briefly summarized here.

The information activities related to the current requirements for manufacturer-requested risk evaluations are already approved by OMB in an ICR entitled, ''Procedures for Requesting a Chemical Risk Evaluation under TSCA'' (EPA ICR No. 2559.03 and OMB Control No. 2070–0202) (Ref 4). The proposed rule replacement ICR addresses the information collection requirements contained in the current regulations as well as in the amendments identified in this proposed rule. As addressed in the currently approved ICR and pursuant 40 CFR part 702, subpart B, the information collection activities are those carried out by a chemical manufacturer in requesting a specific chemical risk evaluation under TSCA be conducted by EPA. EPA established the process for conducting risk evaluations under TSCA. Chemicals that will undergo this evaluation include chemicals designated by the Agency as high-priority in accordance with 40 CFR part 702, subpart A, as well as chemicals for which EPA has granted requests made by manufacturers to have the chemicals evaluated under EPA's risk evaluation process. The replacement ICR addresses proposed amendments to information requirements for manufacturer-requested risk evaluations, including proposed amendments to information requirements addressing joint submissions, the scope of the requested risk evaluation, and the information to be provided in support of the requested risk evaluation, and fee payment. Please see Unit III.K. for additional information about these proposed amendments.

The replacement ICR addresses adjustments to the estimated number of respondents, time for activities, and wage rates related to the current regulatory requirements as approved under OMB Control No. 2070–0202. In addition, the replacement ICR addresses program changes related to the proposed amendments, including changes to content requirements for manufacturer-requested risk evaluation request and associated process changes. The estimated annual burden approved by OMB under OMB Control No. 2070–0202 is 419 hours. The total estimated annual respondent burden being proposed in the replacement ICR is 166 hours, a net decrease of 253 hours. The primary driver in the burden decrease is the estimated number of responses dropping to 1 per year based on the number of requests EPA has received to date. Certain information included with a manufacturer-requested risk evaluation may be claimed as TSCA CBI in accordance with TSCA section 14 (15 U.S.C. 2613), and any such claims must be substantiated in accordance with the Act.

Respondents/affected entities: Persons that manufacture chemical substances and request a chemical be considered for risk evaluation by EPA. Such persons may voluntarily request a risk evaluation but would be required to comply with the requirements for such a request. See Unit I.A.

Respondent's obligation to respond: Voluntary (15 U.S.C. 2605(b)(4)).

Estimated number of respondents: 3.

Frequency of response: On occasion.

Total estimated burden: 166 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $115,711 (per year), includes $0 annualized capital or operation and maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB

control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to EPA using the docket identified at the beginning of this rulemaking. EPA will respond to any ICR-related comments in the final rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at *https://www.reginfo.gov/public/do/PRAMain*. Find this particular ICR by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. OMB must receive comments no later than November 29, 2023.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* The small entities subject to the requirements of this action are manufacturers of chemical substances that submit requests to EPA seeking chemical risk evaluations. The Agency has determined that a low number of small entities may be impacted by voluntarily submitting a request to EPA for a chemical to undergo a risk evaluation. The 2017 final rule considered firms in 60 different NAICS codes that may choose to pursue a manufacturer-requested risk evaluation (approximately 30,000 firms) of which 76 percent were classified as small business (approximately 22,000 firms). When EPA promulgated the 2017 final rule, the Agency estimated that it would receive 5 MRRE submissions per year. However, manufacturers have submitted only 4 MRRE requests since 2017 (or less than one request per year, on average). Therefore, based on the number of submissions received by EPA since 2017, the Agency estimates it will receive only one manufacture-requested risk revaluation per year. That is, only one out of approximately 22,000 small businesses is expected to choose to incur the submission costs ($115,711) in any one year and, thus, a significant number of small businesses would not be impacted by this rulemaking. The decision to request a risk evaluation for a chemical is voluntary and manufacturers may decide not to make such a request. Details of this analysis are presented in the rule-related ICR.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments. The costs involved in this action are imposed only on the private sector entities (manufacturers) that may voluntarily elect to submit a request for a risk evaluation as they would be required to comply with the proposed requirements for such requests.

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999) because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

TSCA section 18(c)(3) defines the scope of Federal preemption with respect to any final rule EPA issues under TSCA section 6(a). That provision provides that Federal preemption of ''statutes, criminal penalties, and administrative actions'' applies to ''the hazards, exposures, risks, and uses or conditions of use of such chemical substances included in any final action the Administrator takes pursuant to [TSCA section 6(a)].'' EPA reads this to mean that states are preempted from imposing requirements through statutes, criminal penalties, and administrative actions relating to any ''hazards, exposures, risks, and uses or conditions of use'' evaluated in the final risk evaluation and informing the risk determination that EPA addresses in the TSCA section 6(a) rulemaking. For example, Federal preemption applies even if EPA does not regulate in that final rule a particular COU, but that COU was evaluated in the final risk evaluation.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000) because it will not 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. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–201 of the Executive order. Therefore, this action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. Since this action does not concern human health risks, EPA's Policy on Children's Health also does not apply. This procedural rule would address how EPA evaluates the risks of existing chemicals under TSCA, including potential risks to children and other PESS. EPA must initiate a rulemaking to address the unreasonable risk to human health or the environment that the Agency may determine are presented by a chemical substance as set forth in a TSCA risk evaluation. Although this procedural rule itself would not directly affect the level of protection provided to human health or the environment, EPA expects that this rulemaking would improve the Agency's consideration of risks to children and other PESS and, in turn, better inform the Agency's determination of whether a chemical substance presents an unreasonable risk of injury to health under its conditions of use. An EPA rulemaking to address an unreasonable risk of injury to health that the Administrator determines is presented by a chemical substance following a risk evaluation could qualify as a covered regulatory action under E.O. 13045 and could be subject to EPA's Policy on Children's Health.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' under Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy and has not otherwise been designated by the Administrator of OMB's Office of Information and Regulatory Affairs as a ''significant energy action.''

I. National Technology Transfer and Advancement Act (NTTAA)

This proposed rulemaking does not involve technical standards. As such, NTTAA section 12(d), 15 U.S.C. 272 note, does not apply to this action.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

EPA believes that it is not practicable to assess whether the human health or environmental conditions that exist prior to this action result in disproportionate and adverse effects on communities with environmental justice concerns consistent with Executive Order 14096 (88 FR 25251, April 26, 2023) and Executive Order 12898 (59 FR 7629, February 16, 1994). This action proposes revisions to the procedures that EPA will use to evaluate the risk of existing chemical substances pursuant to TSCA, and the Agency cannot foresee the final results of those evaluations. However, by specifically including overburdened communities in the regulatory definition of PESS, the Agency believes that this action would assist EPA and others in determining the potential exposures, hazards and risks to overburdened communities associated with existing chemicals a part of a TSCA risk evaluation. The proposed inclusion of overburdened communities among the PESS considered in a chemical risk evaluation would also enable the Agency to design appropriate risk management approaches to address the unreasonable risk that the Agency may determine is presented by a chemical, including any unreasonable risk that is disproportionately borne by communities with environmental justice concerns.

The information supporting this Executive order review is presented in Unit III.G.4.

List of Subjects in 40 CFR Part 702

Environmental protection, Chemicals, Chemical substances, Hazardous substances, Health and safety, Risk evaluation.

Dated: October 18, 2023.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, for the reasons stated in the preamble, EPA proposes to amend 40 CFR part 702 as follows:

PART 702—GENERAL PRACTICES AND PROCEDURES

■ 1. The authority citation for part 702 continues to read as follows:

Authority: 15 U.S.C. 2605 and 2619.

■ 2. Revise and republish subpart B to read as follows:

Subpart B—Procedures for Chemical Substance Risk Evaluations

Sec.

702.31 General provisions.
702.33 Definitions.
702.35 Chemical substances subject to risk evaluation.
702.37 Evaluation requirements.
702.39 Components of risk evaluation.
702.41 Peer review.
702.43 Risk evaluation actions and timeframes.
702.45 Submission of manufacturer requests for risk evaluations.
702.47 Interagency collaboration.
702.49 Publicly available information.

Subpart B—Procedures for Chemical Substance Risk Evaluations

§ 702.31 General provisions.

(a) *Purpose.* This subpart establishes the EPA process for conducting a risk evaluation to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment as required under TSCA section 6(b)(4)(B) (15 U.S.C. 2605(b)(4)(B)).

(b) *Scope.* These regulations establish the general procedures, key definitions, and timelines EPA will use in a risk evaluation conducted pursuant to TSCA section 6(b) (15 U.S.C. 2605(b)).

(c) *Applicability.* The requirements of this part apply to all chemical substance risk evaluations initiated pursuant to TSCA section 6(b) (15 U.S.C. 2605(b)) beginning [30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**]. For risk evaluations initiated prior to this date, but not yet finalized, EPA will seek to apply the requirements in this subpart to the extent practicable. These requirements shall not apply retroactively to risk evaluations already finalized.

(d) *Categories of chemical substances.* Consistent with EPA's authority to take action with respect to categories of chemicals under 15 U.S.C. 2625(c), all references in this part to ''chemical'' or ''chemical substance'' shall also apply to ''a category of chemical substances.''

§ 702.33 Definitions.

All definitions in TSCA apply to this subpart. In addition, the following definitions apply:

Act means the Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*).

Aggregate exposure means the combined exposures from a chemical substance across multiple routes and across multiple pathways.

Conditions of use means the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of.

EPA means the U.S. Environmental Protection Agency.

Pathways means the physical course a chemical substance takes from the source to the organism exposed.

Potentially exposed or susceptible subpopulation means a group of individuals within the general population identified by EPA who, due to either greater susceptibility or greater exposure, may be at greater risk than the general population of adverse health effects from exposure to a chemical substance or mixture, such as infants, children, pregnant women, workers, the elderly, or overburdened communities.

Reasonably available information means information that EPA possesses or can reasonably generate, obtain, and synthesize for use in risk evaluations, considering the deadlines specified in TSCA section 6(b)(4)(G) for completing such evaluation. Information that meets the terms of the preceding sentence is reasonably available information whether or not the information is confidential business information, that is protected from public disclosure under TSCA section 14.

Routes means the ways a chemical substance enters an organism after contact, *e.g.,* by ingestion, inhalation, or dermal absorption.

Sentinel exposure means the exposure from a chemical substance that represents the plausible upper bound of exposure relative to all other exposures within a broad category of similar or related exposures.

Uncertainty means the imperfect knowledge or lack of precise knowledge of the real world either for specific values of interest or in the description of the system.

Variability means the inherent natural variation, diversity, and heterogeneity across time and/or space or among individuals within a population.

§ 702.35 Chemical substances subject to risk evaluation.

(a) *Chemical substances undergoing risk evaluation.* A risk evaluation for a chemical substance designated by EPA as a High-Priority Substance pursuant to

the prioritization process described in subpart A or initiated at the request of a manufacturer or manufacturers under § 702.45, will be conducted in accordance with this part, subject to § 702.31(c).

(b) *Percentage requirements.* EPA will ensure that, of the number of chemical substances that undergo risk evaluation under 15 U.S.C. 2605(b)(4)(C)(i), the number of chemical substances undergoing risk evaluation under 15 U.S.C. 2605(b)(4)(C)(ii) is not less than 25%, if sufficient requests that comply with § 702.37, and not more than 50%.

(c) *Manufacturer-requested risk evaluations for work plan chemical substances.* Manufacturer requests for risk evaluations, described in paragraph (a) of this section, for chemical substances that are drawn from the 2014 update of the TSCA Work Plan for Chemical Assessments will be granted at the discretion of EPA. Such evaluations are not subject to the percentage requirements in paragraph (b) of this section.

§ 702.37 Evaluation requirements.

(a) *Considerations.* (1) EPA will use applicable EPA guidance when conducting risk evaluations, as appropriate and where it represents the best available science.

(2) EPA will document that the risk evaluation is consistent with the best available science and based on the weight of the scientific evidence. Considerations for determining best available science shall include, but are not limited to, the following as applicable:

(i) The extent to which the scientific information, technical procedures, measures, methods, protocols, methodologies, or models employed to generate the information are reasonable for and consistent with the intended use of the information;

(ii) The extent to which the information is relevant for the Administrator's use in making a decision about a chemical substance or mixture;

(iii) The degree of clarity and completeness with which the data, assumptions, methods, quality assurance, and analyses employed to generate the information are documented;

(iv) The extent to which the variability and uncertainty in the information, or in the procedures, measures, methods, protocols, methodologies, or models, are evaluated and characterized; and

(v) The extent of independent verification or peer review of the information or of the procedures, measures, methods, protocols, methodologies or models.

(3) EPA will ensure that all supporting analyses and components of the risk evaluation are suitable for their intended purpose, and tailored to the problems and decision at hand, in order to inform the development of a technically sound determination as to whether a chemical substance presents an unreasonable risk of injury to health or the environment under the conditions of use, based on the weight of the scientific evidence.

(4) EPA will not exclude conditions of use from the scope of the risk evaluation, but a fit-for-purpose approach may result in varying types and levels of analysis and supporting information for certain conditions of use, consistent with paragraph (b) of this section. The extent to which EPA will refine its evaluations for one or more condition of use in any risk evaluation will vary as necessary to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment.

(5) EPA will determine whether a chemical substance does or does not present an unreasonable risk after considering the risks posed under all of the conditions of use and, where EPA makes a determination of unreasonable risk, EPA intends to identify the conditions of use that significantly contribute to such determination.

(6) EPA will evaluate chemical substances that are metals or metal compounds in accordance with 15 U.S.C. 2605(b)(2)(E).

(b) *Information and information sources.* (1) EPA will base each risk evaluation on reasonably available information.

(2) EPA will apply systematic review and/or systematic approaches to reviewing reasonably available information that are objective, unbiased, and transparent.

(3) EPA may determine that certain information gaps can be addressed through application of assumptions, uncertainty factors, models, and/or screening to conduct its analysis with respect to the chemical substance, consistent with 15 U.S.C. 2625. The approaches used will be determined by the quality of reasonably available information, the deadlines specified in TSCA section 6(b)(4)(G) for completing the risk evaluation, and the extent to which the information reduces uncertainty.

(4) EPA expects to use its authorities under the Act, and other information gathering authorities, when necessary to obtain the information needed to perform a risk evaluation for a chemical substance before initiating the risk evaluation for such substance. EPA will also use such authorities during the performance of a risk evaluation to obtain information as needed and on a case-by-case basis to ensure that EPA has adequate, reasonably available information to perform the evaluation. Where appropriate, to the extent practicable, and scientifically justified, EPA will require the development of information generated without the use of new testing on vertebrates.

(5) Among other sources of information, EPA will also consider information and advice provided by the Science Advisory Committee on Chemicals established pursuant to 15 U.S.C. 2625(o).

§ 702.39 Components of risk evaluation.

(a) *In general.* Each risk evaluation will include all of the following components:

(1) A Scope;

(2) A Hazard Assessment;

(3) An Exposure Assessment;

(4) A Risk Characterization; and

(5) A Risk Determination.

(b) *Scope of the risk evaluation.* The scope of the risk evaluation will include all the following:

(1) The condition(s) of use the EPA expects to consider in the risk evaluation.

(2) The potentially exposed populations, including any potentially exposed or susceptible subpopulations as identified as relevant to the risk evaluation by EPA under the conditions of use that EPA plans to evaluate.

(3) The ecological receptors that EPA plans to evaluate.

(4) The hazards to health and the environment that EPA plans to evaluate.

(5) A description of the reasonably available information and scientific approaches EPA plans to use in the risk evaluation.

(6) A conceptual model that describes the actual or predicted relationships between the chemical substance, its associated conditions of use through predicted exposure scenarios, and the identified human and environmental receptors and human and ecological health hazards.

(7) An analysis plan that includes hypotheses and descriptions about the relationships identified in the conceptual model and the approaches and strategies EPA intends to use to assess exposure and hazard effects, and to characterize risk; and a description, including quality, of the data, information, methods, and models, that EPA intends to use in the analysis and how uncertainty and variability will be characterized.

(8) EPA's plan for peer review consistent with § 702.41.

(c) *Hazard assessment.* (1) The hazard assessment process includes the identification, evaluation, and synthesis of information to describe the potential health and environmental hazards of the chemical substance under the conditions of use.

(2) Hazard information related to potential health and environmental hazards of the chemical substance will be reviewed in a manner consistent with best available science based on the weight of scientific evidence and all assessment methods will be documented.

(3) Consistent with § 702.37(b), information evaluated may include, but would not be limited to: Human epidemiological studies, in vivo and/or in vitro laboratory studies, biomonitoring and/or human clinical studies, ecological field data, read across, mechanistic and/or kinetic studies in a variety of test systems. These may include but are not limited to: toxicokinetics and toxicodynamics (*e.g.,* physiological-based pharmacokinetic modeling), and computational toxicology (*e.g.,* high-throughput assays, genomic response assays, data from structure-activity relationships, in silico approaches, and other health effects modeling).

(4) The hazard information relevant to the chemical substance will be evaluated for identified human and environmental receptors, including all identified potentially exposed or susceptible subpopulation(s) determined to be relevant, for the exposure scenarios relating to the conditions of use.

(5) The relationship between the dose of the chemical substance and the occurrence of health and environmental effects or outcomes will be evaluated.

(6) Hazard identification will include an evaluation of the strengths, limitations, and uncertainties associated with the reasonably available information.

(d) *Exposure assessment.* (1) Where relevant, the likely duration, intensity, frequency, and number of exposures under the conditions of use will be considered.

(2) Exposure information related to potential human health or ecological hazards of the chemical substance will be reviewed in a manner consistent with best available science based on the weight of scientific evidence and all assessment methods will be documented.

(3) Consistent with § 702.37(b), information evaluated may include, but would not be limited to: chemical release reports, release or emission scenarios, data and information collected from monitoring or reporting, release estimation approaches and assumptions, biological monitoring data, workplace monitoring data, chemical exposure health data, and exposure modeling.

(4) Chemical-specific factors, including, but not limited to physical-chemical properties and environmental fate and transport parameters, will be examined.

(5) The human health exposure assessment will consider all potentially exposed or susceptible subpopulation(s) determined to be relevant.

(6) Environmental health exposure assessment will characterize and evaluate the interaction of the chemical substance with the ecological receptors and the exposures considered, including populations and communities, depending on the chemical substance and the ecological characteristic involved.

(7) EPA will describe whether sentinel exposures under the conditions of use were considered and the basis for their consideration.

(8) EPA will consider aggregate exposures to the chemical substance, and, when supported by reasonably available information, consistent with the best available science and based on the weight of scientific evidence, include an aggregate exposure assessment in the risk evaluation, or will otherwise explain in the risk evaluation the basis for not including such an assessment.

(9) EPA will assess all exposure routes and pathways relevant to the chemical substance under the conditions of use, including those that are regulated under other Federal statutes.

(e) *Risk characterization*—(1) *Requirements.* To characterize the risks from the chemical substance, EPA will:

(i) Integrate the hazard and exposure assessments into quantitative and/or qualitative estimates relevant to specific risks of injury to health or the environment, including any potentially exposed or susceptible subpopulations identified, under the conditions of use.

(ii) Not consider costs or other non-risk factors;

(iii) Describe the weight of the scientific evidence for the identified hazards and exposures.

(2) *Summary of considerations.* EPA will summarize, as applicable, the considerations addressed throughout the evaluation components, in carrying out the obligations under 15 U.S.C. 2625(h). This summary will include, as appropriate, a discussion of:

(i) *Considerations regarding uncertainty and variability.* Information about uncertainty and variability in each step of the risk evaluation (*e.g.,* use of default assumptions, scenarios, choice of models, and information used for quantitative analysis) will be integrated into an overall characterization and/or analysis of the impact of the uncertainty and variability on estimated risks. EPA may describe the uncertainty using a qualitative assessment of the overall strength and limitations of the data and approaches used in the assessment.

(ii) *Considerations of data quality.* A discussion of data quality (*e.g.,* reliability, relevance, and whether methods employed to generate the information are reasonable for and consistent with the intended use of the information), as well as assumptions used, will be included to the extent necessary. EPA also expects to include a discussion of the extent of independent verification or peer review of the information or of the procedures, measures, methods, protocols, methodologies, or models used in the risk evaluation.

(iii) *Considerations of alternative interpretations.* If appropriate and relevant, where alternative interpretations are plausible, a discussion of alternative interpretations of the data and analyses will be included.

(iv) *Additional considerations for environmental risk.* For evaluation of environmental risk, it may be necessary to discuss the nature and magnitude of the effects, the spatial and temporal patterns of the effects, implications at the individual, species, population, and community level, and the likelihood of recovery subsequent to exposure to the chemical substance.

(f) *Risk determination.* (1) As part of the risk evaluation, EPA will make a single determination as to whether the chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation, under the conditions of use.

(2) In determining whether unreasonable risk is presented, EPA's consideration of occupational exposure scenarios will take into account reasonably available information, including known and reasonably foreseen circumstances where subpopulations of workers are exposed due to the absence or ineffective use of personal protective equipment. EPA will not consider exposure reduction

based on assumed use of personal protective equipment as part of the risk determination.

§ 702.41 Peer review.

EPA expects that peer review activities on risk evaluations conducted pursuant to 15 U.S.C. 2605(b)(4)(A), or portions thereof, will be consistent with the applicable peer review policies, procedures, guidance documents, and methods pursuant to guidance promulgated by Office of Management and Budget, EPA, and in accordance with 15 U.S.C. 2625(h) and (i).

§ 702.43 Risk evaluation actions and timeframes.

(a) *Draft scope.* (1) For each risk evaluation to be conducted EPA will publish a document-that specifies the draft scope of the risk evaluation EPA plans to conduct and publish a notice of availability in the **Federal Register**. The document will address the elements in § 702.39(b).

(2) EPA generally expects to publish the draft scope during the prioritization process concurrent with publication of a proposed designation as a High-Priority Substance pursuant to § 702.9(g), but no later than 3 months after the initiation of the risk evaluation process for the chemical substance.

(3) EPA will allow a public comment period of no less than 45 calendar days during which interested persons may submit comment on EPA's draft scope. EPA will open a docket to facilitate receipt of public comments.

(b) *Final scope.* (1) EPA will, no later than 6 months after the initiation of a risk evaluation, publish a document that specifies the final scope of the risk evaluation EPA plans to conduct, and publish a notice of availability in the **Federal Register**. The document shall address the elements in § 702.39(b).

(2) For a chemical substance designated as a High-Priority Substance under subpart A of this part, EPA will not publish the final scope of the risk evaluation until at least 12 months have elapsed from the initiation of the prioritization process for the chemical substance.

(c) *Draft risk evaluation.* EPA will publish a draft risk evaluation, publish a notice of availability in the **Federal Register**, open a docket to facilitate receipt of public comment, and provide no less than a 60-day comment period, during which time the public may submit comment on EPA's draft risk evaluation. The document shall include the elements in § 702.39(c) through (f).

(d) *Final risk evaluation.* (1) EPA will complete and publish a final risk evaluation for the chemical substance under the conditions of use as soon as practicable, but not later than 3 years after the date on which EPA initiates the risk evaluation. The document shall include the elements in § 702.39(c) through (f) and EPA will publish a notice of availability in the **Federal Register**.

(2) EPA may extend the deadline for a risk evaluation for not more than 6 months. The total time elapsed between initiation of the risk evaluation and completion of the risk evaluation may not exceed 3 and one half years.

(e) *Final determination of unreasonable risk.* Upon determination by the EPA pursuant to § 702.39(f) that a chemical substance presents an unreasonable risk of injury to health or the environment, EPA will initiate action as required pursuant to 15 U.S.C. 2605(a).

(f) *Final determination of no unreasonable risk.* A determination by the EPA pursuant to § 702.39(f) that the chemical substance does not present an unreasonable risk of injury to health or the environment will be issued by order and considered to be a final Agency action, effective on the date of issuance of the order.

(g) *Substantive revisions to scope documents and risk evaluations.* The circumstances under which EPA will undertake substantive revisions to scope and risk evaluation documents are as follows:

(1) *Draft documents.* To the extent there are changes to a draft scope or draft risk evaluation, EPA will describe such changes in the final document.

(2) *Final scope.* To the extent there are changes to the scope of the risk evaluation after publication of the final scope document, EPA will describe such changes in the draft risk evaluation, or, where appropriate and prior to the issuance of a draft risk evaluation, may make relevant information publicly available in the docket and publish a notice of availability of that information in the **Federal Register**.

(3) *Final risk evaluation.* For any chemical substance for which EPA has already finalized a risk evaluation, EPA will generally not revise, supplement, or reissue a final risk evaluation without first undergoing the procedures at § 702.7 to re-initiate the prioritization process for that chemical substance, except where EPA has determined it to be in the interest of protecting human health and the environment to do so, considering the statutory responsibilities and deadlines under 15 U.S.C. 2605.

(4) *Process for revisions to final risk evaluations.* Where EPA determines to revise or supplement a final risk evaluation pursuant to paragraph (g)(3) of this section, EPA will follow the same procedures in this section including publication of a new draft and final risk evaluation and solicitation of public comment in accordance with §§ 702.43(c) and (d), and peer review, as appropriate, in accordance with § 702.41.

§ 702.45 Submission of manufacturer requests for risk evaluations.

(a) *General provisions.* (1) One or more manufacturers of a chemical substance may request that EPA conduct a risk evaluation on a chemical substance.

(2) Such requests must comply with all the requirements, procedures, and criteria in this section.

(3) Subject to limited exceptions in paragraph (e)(7)(iii) of this section, it is the burden of the requesting manufacturer to provide EPA with the information necessary to carry out the risk evaluation.

(4) In determining whether there is sufficient information to support a manufacturer-requested risk evaluation, EPA expects to apply the same standard as it would for EPA-initiated risk evaluations, including but not limited to the considerations and requirements in § 702.37.

(5) EPA may identify data needs at any time during the process described in this section, and, by submitting a request for risk evaluation under this section, the requesting manufacturer agrees to provide, or develop and provide, EPA with information EPA deems necessary to carry out the risk evaluation, consistent with the provisions described in this subpart.

(6) EPA will not expedite or otherwise provide special treatment to a manufacturer-requested risk evaluation pursuant to 15 U.S.C. 2605(b)(4)(E)(ii).

(7) Once initiated in accordance with paragraph (e)(9) of this section, EPA will conduct manufacturer-requested risk evaluations following the procedures in §§ 702.37 through 702.43 and §§ 702.47 through 702.49 of this subpart.

(b) *Method for submission.* All manufacturer-requested risk evaluations under this subpart must be submitted via the EPA Central Data Exchange (CDX) found at *https://cdx.epa.gov.*

(c) *Content of request.* Requests must include all of the following information:

(1) Name, mailing address, and contact information of the entity (or entities) submitting the request. If more than one manufacturer submits the request, all individual manufacturers must provide their contact information.

(2) The chemical identity of the chemical substance that is the subject of the request. At a minimum, this includes: all known names of the chemical substance, including common or trades names, Chemical Abstracts Service (CAS) number, and molecular structure of the chemical substance.

(3) For requests pertaining to a category of chemical substances, an explanation of why the category is appropriate under 15 U.S.C. 2625(c). EPA will determine whether the category is appropriate for risk evaluation as part of reviewing the request in paragraph (e) of this section.

(4) A description of the circumstances under which the chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of, and all information known to or reasonably ascertainable by the requesting manufacturer that supports the identification of the circumstances described in this paragraph (c)(4).

(5) All information known to or reasonably ascertainable by the requesting manufacturer on the health and environmental hazard(s) of the chemical substance, human and environmental exposure(s), and exposed population(s), including but not limited to:

(i) The chemical substance's exposure potential, including occupational, general population and consumer exposures, and facility release information;

(ii) The chemical substance's hazard potential, including all potential environmental and human health hazards;

(iii) The chemical substance's physical and chemical properties.

(iv) The chemical substance's fate and transport properties including persistence and bioaccumulation;

(v) Potentially exposed or susceptible subpopulations which the manufacturer(s) believes to be relevant to the EPA risk evaluation;

(vi) Whether there is any storage of the chemical substance near significant sources of drinking water, including the storage facility location and the nearby drinking water source(s);

(vii) The chemical substance's production volume or significant changes in production volume; and

(viii) Any other information relevant to the hazards, exposures and/or risks of the chemical substance.

(6) Where information described in paragraph (c)(4) or (5) of this section is unavailable, an explanation as to why, and the rationale for why, in the requester's view, the provided information is nonetheless sufficient to allow EPA to complete a risk evaluation on the chemical substance.

(7) Copies of all information referenced in paragraph (c)(5) of this section, or citations if the information is readily available from public sources.

(8) A signed certification that all information contained in the request is accurate and complete, as follows:

> I certify that to the best of my knowledge and belief:
>
> (A) The company named in this request manufactures the chemical substance identified for risk evaluation.
>
> (B) All information provided in the request is complete and accurate as of the date of the request.
>
> (C) I have either identified or am submitting all information in my possession and control, and a description of all other data known to or reasonably ascertainable by me as required under this part. I am aware it is unlawful to knowingly submit incomplete, false and/or misleading information in this request and there are significant criminal penalties for such unlawful conduct, including the possibility of fine and imprisonment.

(9) Where appropriate, information that will inform EPA's determination as to whether restrictions imposed by one or more States have the potential to have a significant impact on interstate commerce or health or the environment, and that as a consequence the request is entitled to preference pursuant to 15 U.S.C. 2605(b)(4)(E)(iii).

(d) *Confidential business information.* Persons submitting a request under this subpart are subject to EPA confidentiality regulations at 40 CFR part 2, subpart B, and 40 CFR part 703.

(e) *EPA process for reviewing requests.* (1) *Public notification of receipt of request.* Within 15 days of receipt of a manufacturer-requested risk evaluation, EPA will notify the public that such request has been received.

(2) *Initial review for completeness.* EPA will determine whether the request appears to meet the requirements specified in this section (*i.e.,* complete), or whether the request appears to not have met the requirements specified in this section (*i.e.,* incomplete). EPA will notify the requesting manufacturer of the outcome of this initial review. For requests initially determined to be incomplete, EPA will cease review pending actions taken by the requesting manufacturer pursuant to paragraph (f) of this section. For requests initially determined to be complete, EPA will proceed to the public notice and comment process described in paragraph (e)(3) of this section.

(3) *Public notice and comment.* No later than 90 days after initially determining a request to be complete pursuant to paragraph (e)(2) of this section, EPA will submit for publication the receipt of the request in the **Federal Register**, open a docket for that request and provide no less than a 60-day public comment period. The docket will contain the CBI sanitized copies of the request and all supporting information. The notice will encourage the public to submit comments and information relevant to the manufacturer-requested risk evaluation, including, but not limited to, identifying information not provided in the request, information the commenter believes necessary to conduct a risk evaluation, and any other information relevant to the conditions of use.

(4) *Secondary review for sufficiency.* Within 90 days following the end of the comment period in paragraph (e)(3) of this section, EPA will further consider whether public comments highlight deficiencies in the request not identified during EPA's initial review, and/or that the available information is not sufficient to support a reasoned evaluation. EPA will notify the requesting manufacturer of the outcome of this review. For requests determined to not be supported by sufficient information, EPA will cease review pending actions taken pursuant to paragraph (f) of this section. For requests determined to be supported by sufficient information, EPA will proceed with request review process in accordance with paragraph (e)(5) of this section.

(5) *Grant.* Where EPA determines a request to be complete and sufficiently supported in accordance with paragraphs (e)(2) and (4) of this section, and subject to the percentage limitations in TSCA section 6(b)(4)(E)(i)(II), EPA will grant the request. A grant does not mean that EPA has all information necessary to complete the risk evaluation.

(6) *Publication of draft conditions of use and request for information.* EPA will publish a notice in the **Federal Register** that identifies draft conditions of use, requests relevant information from the public, and provides no less than a 60-day public comment period. Within 90 days following the close of the public comment period in this paragraph, EPA will determine whether further information is needed to carry out the risk evaluation and notify the requesting manufacturer(s) of its determination, pursuant to paragraph (e)(7) of this section. If EPA determines at this time that no further information is necessary, EPA will initiate the risk evaluation, pursuant to paragraph (e)(9) of this section.

(7) *Identification of information needs.* Where additional information

needs are identified, EPA will notify the requesting manufacturer(s) and set a reasonable amount of time, as determined by EPA, for response. In response to EPA's notice, and subject to the limitations in paragraph (g) of this section, the requesting manufacturer(s) may:

(i) *Provide the necessary information.* EPA will set a reasonable amount of time, as determined by EPA, for the requesting manufacturer(s) to produce or develop and produce the information. Upon receipt of the new information, EPA will review for sufficiency and make publicly available to the extent possible, including CBI-sanitized copies of that information; or

(ii) *Withdraw the risk evaluation request.* Fees to be collected or refunded shall be determined pursuant to paragraph (k) of this section and 40 CFR 700.45; or

(iii) *Request that EPA obtain the information using authorities under TSCA sections 4, 8 or 11.* The requesting manufacturer(s) must provide a rationale as to why the information is not reasonably ascertainable to them. EPA will review and provide notice of its determination to the requesting manufacturer. Upon receipt of the information, EPA will review the additional information for sufficiency and provide additional public notice.

(8) *Unfulfilled information needs.* In circumstances where there have been additional data needs identified pursuant to paragraph (e)(7) of this section but the requesting manufacturer(s) is unable or unwilling to fulfill those needs in a timely manner, has produced information that is insufficient as determined by EPA, or where EPA determines that a request to use TSCA authorities under section 4, 8 or 11 is not warranted, EPA may deem the request to be constructively withdrawn under paragraph (e)(7)(ii) of this section.

(9) *Initiation of the risk evaluation.* Within 90 days of the end of the comment period provided in paragraph (e)(6) of this section, or within 90 days of EPA determining that information pursuant to paragraph (e)(7) of this section is sufficient, EPA will initiate the requested risk evaluation and follow all requirements in this subpart, including but not limited to §§ 702.37 through 702.43 and §§ 702.47 through 702.49 of this subpart, and notify the requesting manufacturer and the public. Initiation of the risk evaluation does not limit or prohibit the Agency from identifying additional data needs during the risk evaluation process.

(f) *Incomplete or insufficient request.* Where EPA has determined that a request is incomplete or insufficient pursuant to paragraph (e)(2) or (4) of this section, requesting manufacturer(s) may supplement and resubmit the request. EPA will follow the process described in paragraph (e) of this section as it would for a new request.

(g) *Withdrawal of request.* Requesting manufacturer(s) may withdraw a request at any time prior to EPA's grant of such request pursuant to paragraph (e)(5) of this section, or in accordance with paragraph (e)(7) of this section and subject to payment of applicable fees. Requesting manufacturers may not withdraw a request once EPA has initiated the risk evaluation. EPA may deem a request constructively withdrawn in the event of unfulfilled information needs pursuant to paragraph (e)(8) of this section or non-payment of fees as required in 40 CFR 700.45. EPA will notify the requesting manufacturer and the public of the withdrawn request.

(h) *Data needs identified post-initiation.* Where EPA identifies additional data needs after the risk evaluation has been initiated, the requesting manufacturer(s) may remedy the deficiency pursuant to paragraph (e)(7)(i) or (iii) of this section.

(i) *Supplementation of original request.* At any time prior to the end of the comment period described in paragraph (e)(6) of this section, the requesting manufacturer(s) may supplement the original request with any new information that becomes available to the manufacturer(s). At any point prior to the completion of a manufacturer-requested risk evaluation pursuant to this section, manufacturer(s) must supplement the original request with any information that meets the criteria in 15 U.S.C. 2607(e) and this section, or with any other reasonably ascertainable information that has the potential to change EPA's risk evaluation. Such information must be submitted consistent with 15 U.S.C. 2607(e) if the information is subject to that section or otherwise within 30 days of the manufacturer's obtaining the information.

(j) *Limitations on manufacturer-requested risk evaluations—*

(1) *In general.* EPA will initiate a risk evaluation for all requests from manufacturers for non-TSCA Work Plan Chemicals that meet the criteria in this subpart, until EPA determines that the number of manufacturer-requested chemical substances undergoing risk evaluation is equal to 25% of the High-Priority Substances identified in subpart A as undergoing risk evaluation. Once that level has been reached, EPA will initiate at least one new manufacturer-requested risk evaluation for each manufacturer-requested risk evaluation completed so long as there are sufficient requests that meet the criteria of this subpart, as needed to ensure that the number of manufacturer-requested risk evaluations is equal to at least 25% of the High-Priority substances risk evaluation and not more than 50%.

(2) *Preferences.* In conformance with § 702.35(c), in evaluating requests for TSCA Work Plan Chemicals and requests for non-TSCA Work Plan chemicals in excess of the 25% threshold in § 702.35(b), EPA will give preference to requests for risk evaluations on chemical substances:

(i) First, for which EPA determines that restrictions imposed by one or more States have the potential to have a significant impact on interstate commerce, health or the environment; and then

(ii) Second, based on the order in which the requests are received.

(k) *Fees.* Manufacturers must pay fees to support risk evaluations as specified under 15 U.S.C. 2605(b)(4)(E)(ii), and in accordance with 15 U.S.C. 2525(b) and 40 CFR 700.45. In the event that a request for a risk evaluation is withdrawn by the requesting manufacturer pursuant to paragraph (g) of this section, the total fee amount due will be either, in accordance with 40 CFR 700.45(c)(2)(x) or (xi), 50% or 100% of the actual costs expended in carrying out the risk evaluation as of the date of receipt of the withdrawal notice. The payment amount will be determined by EPA, and invoice or refund issued to the requesting manufacturer(s) as appropriate.

§ 702.47 Interagency collaboration.

During the risk evaluation process, not to preclude any additional, prior, or subsequent collaboration, EPA will consult with other relevant Federal agencies.

§ 702.49 Publicly available information.

For each risk evaluation, EPA will maintain a public docket at *https://www.regulations.gov* to provide public access to the following information, as applicable for that risk evaluation:

(a) The draft scope, final scope, draft risk evaluation, and final risk evaluation;

(b) All notices, determinations, findings, consent agreements, and orders;

(c) Any information required to be provided to EPA under 15 U.S.C. 2603;

(d) A nontechnical summary of the risk evaluation;

(e) A list of the studies, with the results of the studies, considered in carrying out each risk evaluation;

(f) Any final peer review report, including the response to peer review and public comments received during peer review; and

(g) Response to public comments received on the draft scope and the draft risk evaluation.

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