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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 185

RIN 3206–AO65

Program Fraud Civil Remedies: Civil Monetary Penalty Inflation Adjustment

AGENCY: Office of Personnel Management (OPM).

ACTION: Final rule.

SUMMARY: This rule adjusts the level of civil monetary penalties contained in U.S. Office of Personnel Management regulations implementing the Program Fraud Civil Remedies Act of 1986, in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and Office of Management and Budget guidance.

DATES: Effective January 22, 2024.

FOR FURTHER INFORMATION CONTACT: Valerie Dew, Office of the General Counsel, Office of Personnel Management, 1900 E St. NW, Washington, DC 20415, *Valerie.Dew@opm.gov,* (202) 606–1700.

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (sec. 701 of Pub. L. 114–74, 28 U.S.C. 2461 note) (''the Act''). The Act required agencies to: (1) adjust the level of civil monetary penalties with an initial ''catch-up'' adjustment through an interim final rule, and (2) make subsequent annual adjustments for inflation not later than January 15 of each year. The purpose of these adjustments is to maintain the deterrent effect of civil penalties. OPM has updated the agency's monetary penalties since the passage of the 2015 Act.

This rule takes into account adjustments for the year 2024 based on inflation since the last adjustment. These calculations were made based on guidance contained in Office of Management and Budget Memorandum M–24–07:

CFR citation	Description of the penalty	2023 Inflation adjustment	2024 Inflation adjustment
5 CFR 185.103(a)	Civil Penalty for False Claims	$13,508	$13,946
5 CFR 185.103(f)(2)	Civil Penalty for False Statements	13,508	13,946

This final rule is being issued without prior public notice or opportunity for public comments and is effective upon publication in the **Federal Register**. The 2015 Act's amendments to the Inflation Adjustment Act required the agency to adjust penalties initially through an interim final rulemaking, which did not require the agency to complete a notice and comment process prior to promulgating the interim final rule. The amendments also explicitly required the agency to make subsequent annual adjustments notwithstanding 5 U.S.C. 553 (the section of the Administrative Procedure Act that normally requires agencies to engage in notice and comment and to delay the effective date). The formula used for adjusting the amount of civil penalties is given by statute, with no discretion provided to OPM regarding the computation of the adjustments. OPM is charged only with performing ministerial computations to determine the amount of adjustment to the civil penalties due to increases in the Consumer Price Index for all Urban Consumers (CPI–U).

II. Calculation of Adjustment

The Office of Management and Budget (OMB) issues guidance annually on calculating adjustments. Under this guidance, OPM has described how to identify applicable civil monetary penalties and calculated the annual adjustment. A civil monetary penalty is any assessment with a dollar amount that is levied for a violation of a Federal civil statute or regulation and is assessed or enforceable through a civil action in Federal court or an administrative proceeding. A civil monetary penalty does not include a penalty levied for violation of a criminal statute or fees for services, licenses, permits, or other regulatory review. The calculated catch-up adjustment is based on the percent change between the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October in the year of the previous adjustment (or in the year of establishment, if no adjustment has been made) and the October 2015 CPI–U.

Office of Management and Budget Memorandum M 24–07 stated that the cost-of-living multiplier for calculating adjustments in 2024 was 1.03241. This multiplier is to be applied to the current level of civil monetary penalties for agencies. When OPM's 2023 penalties of $13,508 are multiplied by 1.03241 and rounded to the nearest dollar, the resulting penalty amount is $13,946.

III. Procedural Requirements

A. Regulatory Review

OPM has examined the impact of this rule as required by Executive Orders 12866, 13563, and 14094, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). OMB has determined that this rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094.

B. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)), requires an agency to prepare a regulatory flexibility analysis for rules unless the agency certifies that the rule will not have a significant economic impact on a substantial

number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. See 5 U.S.C. 603(a) and 604(a). The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires agencies to adjust civil penalties annually. No discretion is allowed. Thus, the RFA does not apply to this final rule.

C. Unfunded Mandate Reform Act of 1995 (2 U.S.C. 1532)

This rule does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and will not significantly or uniquely affect small governments.

D. E.O. 12630, Takings

This rule does not have takings implications.

E. E.O. 13132, Federalism

This rule does not have federalism implications. The rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

F. E.O. 12988, Civil Justice Reform

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Does not unduly burden the judicial system.

(b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

G. E.O. 13175, Consultation With Indian Tribes

In accordance with Executive Order 13175, OPM has evaluated this rule and determined that it has no tribal implications.

H. Paperwork Reduction Act

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13.

List of Subjects in 5 CFR Part 185

Claims, Fraud, Penalties.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

For the reasons set forth in the preamble, OPM amends 5 CFR part 185 as follows:

PART 185—PROGRAM FRAUD CIVIL REMEDIES

■ 1. The authority citation for part 185 continues to read as follows:

Authority: 28 U.S.C. 2461 note; 31 U.S.C. 3801–3812.

§ 185.103 [Amended]

■ 2. In § 185.103, amend paragraphs (a) introductory text and (f)(2) by removing ''$13,508'' and adding ''$13,946'' in its place.

[FR Doc. 2024–01085 Filed 1–19–24; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0033; Project Identifier MCAI–2023–01206–T; Amendment 39–22661; AD 2024–01–10]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A330–200, A330–200 Freighter, A330–300, A330–800, A330–900, A340–500, and A340–600 series airplanes. This AD was prompted by a report of temporary loss of the flight director (FD) and autothrottle (A/THR) on an airplane dispatched under the provisions of a master minimum equipment list (MMEL) item for fuel quantity indication (FQI). This AD requires revising the operator's existing FAA-approved minimum equipment list (MEL), as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 6, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 6, 2024.

The FAA must receive comments on this AD by March 7, 2024.

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–2024–0033; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone +49 221 8999 000; email *ADs@easa.europa.eu*; website *easa.europa.eu*. You may find this material on the EASA website at *ad.easa.europa.eu*.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2024–0033.

FOR FURTHER INFORMATION CONTACT: Vladimir A. Ulyanov, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone 206–231–3229; email *vladimir.ulyanov@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–2024–0033; Project Identifier MCAI–2023–01206–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Vladimir A. Ulyanov, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone 206–231–3229; email *vladimir.ulyanov@faa.gov*. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2023–0206, dated November 21, 2023 (EASA AD 2023–0206) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, –343, –841, and –941 airplanes; and Model A340–541, –542, –642, and –643 airplanes. Model A340–542 and –643 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability. The MCAI states temporary loss of the FD and A/THR occurred on an airplane dispatched under the provisions of MMEL item 28–07–02–05, ''Inner Tank Fuel Quantity Indication on the Fuel SD page.'' Subsequent investigation determined that this behavior is systematic, when an airplane is dispatched under certain MMEL FQI items, because the FQI unavailability invalidates the gross weight and the center-of-gravity computation at the fuel control and monitoring computer (FCMC)-level. To address this unsafe condition, Airbus issued an MMEL update prohibiting required navigation performance—authorization required (RNP–AR) operation for airplanes dispatched under certain MMEL FQI items. This condition, if not corrected, could affect the airplane's capability to follow the desired ground track and vertical path during certain takeoff and approach phases.

The FAA is issuing this AD to address the loss of the autopilot (AP), FD, and A/THR when those systems are required for RNP–AR takeoffs and landings, which could result in failure to maintain safe flight and landing. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–0033.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0206 specifies procedures for revising the operator's MEL by incorporating the information in MMEL items 28–07–02–05A, 28–07–02–06A, 28–07–02–07A, 28–07–02–08A, and 28–07–02–10A of Airbus A330/340 MMEL Major Event Revision, dated August 23, 2023, for airplanes that have implemented RNP–AR capability by embodying—

- Airbus modification 57729, 200624, 200628, 203441 or 203442 in production; or
- Airbus Service Bulletin A330–34–3262, A330–34–3308, A330–34–3345, A330–34–3378, or A330–34–3409 in service.

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

FAA's Determination

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

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2023–0206 described previously, except for any differences identified as exceptions in the regulatory text of this AD.

Compliance With MEL Revisions

EASA AD 2023–0206 requires operators to implement the instructions of the MMEL update, on the basis of which the applicable MEL of each affected airplane must be amended and thereafter ''operate the aeroplane(s) accordingly.'' However, this AD does not specifically require that action as it is already required by an FAA regulation. Section 121.628(a)(5) of 14 CFR requires airplanes to be operated under all applicable conditions and limitations contained in the operator's MEL. Therefore, including a requirement in this AD to operate the airplane according to the revised MEL would be redundant and unnecessary.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2023–0206 is incorporated by reference in this AD. This AD requires compliance with EASA AD 2023–0206 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0206 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2023–0206. Service information required by EASA AD 2023–0206 for compliance will be available at *regulations.gov* under Docket No. FAA–2024–0033 after this AD is published.

FAA's Justification and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those

procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because the loss of the AP, FD, and A/THR when those systems are required for RNP–AR takeoffs and landings could result in failure to maintain safe flight and landing. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

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

Regulatory Flexibility Act (RFA)

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

Costs of Compliance

The FAA estimates that this AD affects 142 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$12,070

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2024–01–10 Airbus SAS: Amendment 39–22661; Docket No. FAA–2024–0033; Project Identifier MCAI–2023–01206–T.

(a) Effective Date

This airworthiness directive (AD) is effective February 6, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS airplanes identified in paragraphs (c)(1) and (2) of this AD, certificated in any category.

(1) Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, –343, –841, and –941 airplanes.

(2) Model A340–541 and –642 airplanes.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report of temporary loss of the flight director (FD) and autothrottle (A/THR) on an airplane dispatched under the provisions of a master minimum equipment list (MMEL) item for fuel quantity indication. The FAA is issuing this AD to address the loss of the autopilot (AP), FD, and A/THR when those systems are required for navigation performance—authorization required (RNP–AR) takeoffs and landings. The unsafe condition, if not addressed, could result in failure to maintain safe flight and landing.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0206, dated November 21, 2023 (EASA AD 2023–0206).

(h) Exceptions to EASA AD 2023–0206

(1) Where EASA AD 2023–0206 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (1) of EASA AD 2023–0206 specifies to ''implement the instructions of the MMEL update, on basis of which the applicable MEL of each affected aeroplane must be amended,'' this AD requires replacing those words with ''revise the operator's existing FAA-approved MEL by incorporating the information identified in ''The MMEL update'' as defined in EASA AD 2023–0206.''

(3) Where paragraph (1) of EASA AD 2023–0206 specifies ''and, thereafter, operate the aeroplane(s) accordingly,'' this AD does not require that action as it is already required by an existing FAA operating regulation (see 14 CFR 121.628(a)(5)).

(4) Where paragraph (2) of EASA AD 2023–0206 specifies ''the instructions of the MMEL update are implemented for that aeroplane,'' this AD requires replacing those words with ''the operator's existing FAA-approved MEL is revised by incorporating the information identified in ''The MMEL update'' as defined in EASA AD 2023–0206.''

(5) Where paragraph (2) of EASA AD 2023–0206 specifies implementing the instructions of the MMEL update before next flight after modifying a Group 2 airplane into a Group 1 airplane, this AD requires accomplishing the MEL update within 30 days after the effective date of this AD, or before further flight after accomplishing the modification, whichever occurs later.

(6) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0206.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(j) Additional Information

For more information about this AD, contact Vladimir A. Ulyanov, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone 206–231–3229; email *vladimir.ulyanov@faa.gov*.

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0206, dated November 21, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0206, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone +49 221 8999 000; email *ADs@easa.europa.eu*; website *easa.europa.eu*. You may find this EASA AD on the EASA website at *ad.easa.europa.eu*.

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

(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 January 10, 2024.

Victor Wicklund,

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

[FR Doc. 2024–01162 Filed 1–18–24; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1325; Airspace Docket No. 23–AGL–17]

RIN 2120–AA66

Amendment of VOR Federal Airway V–36 and Establishment of RNAV Route T–675; Northcentral United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, delay of effective date.

SUMMARY: This action delays the effective date of a final rule published in the **Federal Register** on October 19, 2023, amending Very High Frequency Omnidirectional Range (VOR) Federal Airway V–36 and establishing Canadian Area Navigation (RNAV) Route T–675 in the northcentral United States (U.S.) airspace. The FAA is delaying the effective date to allow sufficient time for completion of the required flight inspection of the route.

DATES: The effective date of the final rule published on September 22, 2023 (88 FR 65311), with an effective date of November 30, 2023, delayed on October 19, 2023 (88 FR 71990) to March 21, 2024, is delayed to May 16, 2024. The Director of the Federal Register approved this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

Background

The FAA published a final rule in the **Federal Register** for Docket No. FAA–2023–1325 on September 22, 2023 (88 FR 65311), effective November 30, 2023, amending VOR Federal Airway V–36 and establishing Canadian RNAV Route T–675 in the northcentral U.S. airspace. On October 19, 2023 (88 FR 71990), the FAA delayed the effective date for that final rule to March 21, 2024. After the October 19, 2023, final rule was published, the FAA determined that the required flight inspection for the establishment, certification, and publication of T–675 was not completed due to adverse weather conditions.

The FAA expects the required flight inspection for Canadian RNAV Route T–675 will be completed by May 16, 2024; therefore, the rule amending VOR Federal Airway V–36 and establishing Canadian RNAV Route T–675 within US airspace is delayed to coincide with that date.

Incorporation by Reference

VOR Federal airways are published in paragraph 6010(a) and Canadian Area Navigation routes (T-routes) are published in paragraph 6013 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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

Good Cause for No Notice and Comment

Section 553(b)(3)(B) of Title 5, United States Code, (the Administrative Procedure Act) 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 seeking comment prior to the rulemaking. The FAA finds that prior notice and public comment to this final rule is unnecessary due to the brief length of the extension of the

effective date and the fact that there is no substantive change to the rule.

Delay of Effective Date

Accordingly, pursuant to the authority delegated to me, the effective date of the final rule, Airspace Docket 23–AGL–17, published in the **Federal Register** on September 22, 2023 (88 FR 65311), FR Doc. 2023–20449, with an effective date of November 30, 2023, delayed on October 19, 2023 (88 FR 71990), FR Doc. 2023–22993, to March 21, 2024, is hereby delayed until May 16, 2024.

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

Issued in Washington, DC, on January 16, 2024.

Frank Lias,

Manager, Airspace and Rules Group.

[FR Doc. 2024–01043 Filed 1–19–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1006; Airspace Docket No. 22–AWP–65]

RIN 2120–AA66

Modification of Class E Airspace; Minden-Tahoe Airport, Minden, NV; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting a final rule that published in the **Federal Register** on December 22, 2023. The final rule modified Class E airspace extending upward from 700 feet above the surface at Minden-Tahoe Airport, Minden, NV. This action corrects a typographical error within the airspace legal description text.

DATES: Effective 0901 UTC, March 21, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11, Airspace Designations and Reporting Points, and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: Keith Adams, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2428.

SUPPLEMENTARY INFORMATION:

History

The FAA published a final rule in the **Federal Register** (88 FR 88528; December 22, 2023) for Docket FAA–2023–1006, which modified Class E airspace extending upward from 700 feet above the surface at the Minden-Tahoe Airport, Minden, NV. Subsequent to publication, the FAA identified that the listed title associated with the Class E airspace indicated California (CA) instead of Nevada (NV). The FAA also identified an error in the text of the Class E airspace legal description. The airspace extending from the 4.2-miles radius to 7 miles south of the airport is described as ''1.2 miles each side of a 180° bearing''; it should say ''1.1 miles each side of the airport's 180° bearing'', as proposed. This action corrects these typographical errors.

Correction to the Final Rule

In FR Doc 2023–28228 at 88528, published in the **Federal Register** on December 22, 2023, the FAA makes the following corrections:

■ 1. On page 88529, beginning in the second and continuing into the third column, correct the AWP NV E5 Minden airspace title and description to read as follows:

AWP NV E5 Minden, NV [Corrected]

Minden-Tahoe Airport, NV
(Lat. 39°00′02″ N, long. 119°45′04″ W)

That airspace extending upward from 700 feet above the surface within a 4.2-mile radius of the airport, that airspace 2 miles each side of the airport's 001° bearing extending from the 4.2-mile radius to 8.9 miles north of the airport, and that airspace 1.1 miles each side of the airport's 180° bearing extending from the 4.2-mile radius to 7 miles south of the airport.

Issued in Des Moines, Washington.

Joseph Bert,

Acting Group Manager, Western Service Center, Operations Support Group.

[FR Doc. 2024–01061 Filed 1–19–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1417; Airspace Docket No. 22–AEA–17]

RIN 2120–AA66

Establishment of United States Area Navigation Route (RNAV) Q–476, and Amendment of United States (RNAV) Route T–393; Northeastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes United States Area Navigation (RNAV) Route Q–476, and amends RNAV Route T–393 in support of the Next Generation Air Transportation System (NextGen) efforts to provide a modern RNAV route structure to improve the safety and efficiency of the National Airspace System (NAS).

DATES: Effective date 0901 UTC, March 21, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

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

History

The FAA published a NPRM for Docket No. FAA–2023–1417 in the **Federal Register** (88 FR 42889; July 5, 2023), proposing to establish one and amend one RNAV route in support of transitioning the NAS from a ground-based to a satellite-based navigation. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Differences From the NPRM

Subsequent to the publication of the NPRM, the FAA identified a typographical error in the title and the summary that incorrectly stated RNAV Route T–739 was to be amended. The correct RNAV Route amended is T–393.

Additionally, in the NPRM's description of RNAV Route T–393, the FAA incorrectly listed the GAILS, MA route point as a waypoint (WP). The route point is actually identified as a Fix in the National Airspace System Resource (NASR) database and charted as a Fix accordingly. This final rule corrects these errors.

Incorporation by Reference

United States Area Navigation routes are published in paragraph 2006 and 6011 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This action amends 14 CFR part 71 by establishing RNAV Route Q–476 and amending RNAV Route T–393 in the northeastern United States to support NextGen efforts to provide a modern RNAV route structure to improve the safety and efficiency of the NAS. The RNAV routes are described below.

Q–476: Q–476 is a new RNAV route that extends from the Jamestown, NY (JHW), Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) to the NWTON, NJ, WP. This route overlays portions of Jet Routes J–106 and J–70 from the Jamestown VOR/DME to the Stillwater, NY (STW), VOR/DME. Q–476 provides connectivity for RNAV-equipped aircraft between the Jamestown, NY area and the Newark, NJ area.

T–393: T–393 is an amended route that extends from the GAILS, MA, Fix to the Burlington, VT (BTV), VOR/DME. This amended route replaces the PUTNM, CT, WP with the Putnam, CT (PUT), VOR/DME due to the Putnam, CT (PUT), VOR/DME planned decommissioning being extended until the year 2028. Fixes are removed from the route's legal description for segments that contain turns of less than one degree. The following Fixes are removed; INNDY, MA, Fix; FOSTY, RI, Fix; GRIPE, MA, Fix; STRUM, NH, Fix; UNKER, NH, Fix; MCADM, NH, Fix; ZIECH, VT, Fix; DAVID, VT, Fix; CEVIB, VT, Fix; and POROE, VT, Fix.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action of establishing RNAV Route Q–476 and amending RNAV Route T–393 in the northeastern United States, to provide additional RNAV routing within the NAS in support of transitioning it from ground-based to satellite-based navigation, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5b, which categorically excludes from further environmental impact review ''Actions regarding establishment of jet routes and Federal airways (see 14 CFR 71.15, *Designation of jet routes and VOR Federal airways*) . . .''. As such, this airspace action is not expected to cause any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and

effective September 15, 2023, is amended as follows:

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q–476 Jamestown, NY (JHW) to NWTON, NJ [New]

Jamestown, NY (JHW)	VOR/DME	(Lat. 42°11′18.99″ N, long. 079°07′16.71″ W)
WLKES, PA	WP	(Lat. 41°16′22.57″ N, long. 075°41′21.60″ W)
NWTON, NJ	WP	(Lat. 40°59′45.19″ N, long. 074°52′09.21″ W)

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–393 GAILS, MA to Burlington, VT (BTV) [Amended]

GAILS, MA	FIX	(Lat. 41°52′08.51″ N, long. 070°24′07.69″ W)
Providence, RI (PVD)	VOR/DME	(Lat. 41°43′27.63″ N, long. 071°25′46.71″ W)
Putnam, CT (PUT)	VOR/DME	(Lat. 41°57′19.66″ N, long. 071°50′38.74″ W)
Gardner, MA (GDM)	VOR/DME	(Lat. 42°32′45.32″ N, long. 072°03′29.48″ W)
KEYNN, NH	WP	(Lat. 42°47′39.99″ N, long. 072°17′30.35″ W)
LBNON, NH	WP	(Lat. 43°40′44.43″ N, long. 072°12′58.18″ W)
Montpelier, VT (MPV)	VOR/DME	(Lat. 44°05′07.72″ N, long. 072°26′57.71″ W)
Burlington, VT (BTV)	VOR/DME	(Lat. 44°23′49.58″ N, long. 073°10′57.49″ W)

* * * * *

Issued in Washington, DC, on January 11, 2024.

Frank Lias,

Manager, Rules and Regulations Group.

[FR Doc. 2024–00803 Filed 1–19–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

30 CFR Part 1241

[Docket No. ONRR–2022–0003; DS63644000 DR2000000.CH7000 245D1113RT]

RIN 1012–AA36

2024 Civil Monetary Penalty Inflation Adjustments

AGENCY: Office of Natural Resources Revenue (ONRR), Interior.

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (referred to herein as the ''Inflation Adjustment Acts''), and Office of Management and Budget (OMB) guidance, ONRR is adjusting for inflation the civil monetary penalty (CMP) amounts it assesses under the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA).

DATES: This rule is effective on January 22, 2024.

FOR FURTHER INFORMATION CONTACT: For questions on procedural issues, contact Ginger Hensley, Regulatory Specialist, by telephone at (303) 231–3171 or by email to *Ginger.Hensley@onrr.gov.* For questions on technical issues, contact Michael Marchetti, Enforcement Program Manager, by telephone at (303) 231–3125 or by email to *Michael.Marchetti@onrr.gov.*

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I. Background

FOGRMA, at 30 U.S.C. 1719(a) through (d), authorizes the Secretary of the Interior (''Secretary'') to assess CMPs for royalty reporting and other violations. Pursuant to authority delegated to it by the Secretary, ONRR published regulations at 30 CFR part 1241 implementing the Secretary's CMP authority. The Inflation Adjustment Acts require Federal agencies to publish annual CMP inflation adjustments in the **Federal Register** by January 15th of each year.

The Inflation Adjustment Acts and OMB Memorandum No. M–24–07, December 19, 2023, (''OMB Memorandum'') specify that the annual inflation adjustments are based on the percent change between the Consumer Price Index for all Urban Consumers (''CPI–U'') published by the Department of Labor for the month of October in the year of the previous adjustment, and the October CPI–U for the preceding year. The OMB Memorandum further specifies that the cost-of-living adjustment multiplier for 2024, not seasonally adjusted, is 1.03241 for CY 2024 (the October 2023 CPI–U (307.671) divided by the October 2022 CPI–U (298.012) = 1.03241). ONRR used this guidance to calculate required inflation adjustments. Pursuant to the Inflation Adjustment Acts, any increases in CMPs are rounded to the nearest whole dollar and the new maximum penalty rates apply to CMPs assessed after the date the increase takes effect.

II. ONRR's Inflation-Adjusted Maximum Rates

This final rule increases the maximum CMP dollar amounts for each of the four violation categories identified in 30 U.S.C. 1719(a)–(d) and implemented by 30 CFR part 1241. The following table identifies the applicable ONRR regulations, the dollar amounts set forth in the regulations, and the adjusted amounts.

30 CFR citation	Current maximum penalty	2024 Inflation adjustment multiplier	2024 Adjusted maximum penalty
1241.52(a)(2)	$1,474	1.03241	$1,522
1241.52(b)	14,754	1.03241	15,232
1241.60(b)(1)	29,505	1.03241	30,461
1241.60(b)(2)	73,764	1.03241	76,155

III. Procedural Matters

A. Regulatory Planning and Review (Executive Orders 12866, 13563, and 14094)

Executive Order (''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 OMB will review all significant rules. OIRA has determined that agency regulations intended only to implement the annual inflation adjustments are not significant, provided they are consistent with the OMB Memorandum. Because ONRR is only implementing the annual inflation adjustments in this final rule, this rule is not significant under E.O. 12866.

E.O. 13563 reaffirms the principles of E.O. 12866, while calling for improvements in the United States' regulatory system to promote predictability, to reduce uncertainty, and to use the most innovative and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes 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. ONRR developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601, *et seq.,* because the rule only makes an adjustment for inflation. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires agencies to adjust civil penalties with an annual inflation adjustment. Therefore, the RFA does not apply to this rulemaking.

C. Congressional Review Act

This rule is not a major rule under 5 U.S.C. 804(2), the Congressional Review Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more;

(b) Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, local government agencies; or geographic regions; and

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. This rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. Therefore, ONRR is not required to provide a statement containing the information that the Unfunded Mandates Reform Act (2 U.S.C. 1531, *et seq.*) requires because this rule is not an unfunded mandate.

E. Takings (E.O. 12630)

This rule does not result in a taking of private property or otherwise have takings implications under E.O. 12630. Therefore, this rule does not require a takings implication assessment.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient Federalism implications to warrant the preparation of a federalism summary impact statement.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a), which requires that ONRR review all regulations to eliminate errors and ambiguity and to write them to minimize litigation; and

(b) Meets the criteria of section 3(b)(2), which requires that ONRR write all regulations in clear language, using clear legal standards.

H. Consultation With Indian Tribal Governments (E.O. 13175)

The Department of the Interior (''DOI'') strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. Under the DOI's consultation policy and the criteria in E.O. 13175, ONRR evaluated this rule and determined that it will have no substantial, direct effects on Federally recognized Indian Tribes and does not require consultation.

I. Paperwork Reduction Act

This rule:

(a) Does not contain any new information collection requirements; and

(b) Does not require a submission to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). *See* 5 CFR 1320.4(a)(2).

J. National Environmental Policy Act of 1969 (''NEPA'')

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. ONRR is not required to provide a detailed statement under NEPA because this rule qualifies for categorical exclusion under 43 CFR 46.210(i) in that this rule is ''. . . of an administrative, financial, legal, technical, or procedural nature. . . .'' ONRR also has determined that this rule is not involved in any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211 and, therefore, does not require a Statement of Energy Effects.

L. Clarity of This Regulation

ONRR is required by E.O. 12866 (section 1(b)(12)), E.O. 12988 (section 3(b)(1)(B)), and E.O. 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule ONRR publishes must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use common, everyday words and clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible;

If you feel that ONRR has not met these requirements, send your comments to *ONRR_RegulationsMailbox@onrr.gov.* Your comments should be as specific as possible. For example, you should identify the number of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

M. Administrative Procedure Act

The Act requires agencies to publish annual inflation adjustments by January 15 of each year, notwithstanding section 553 of the Administrative Procedure Act. OMB has interpreted this direction to mean that the usual APA public procedure for rulemaking—which includes public notice of a proposed rule, an opportunity for public comment, and a delay in the effective date of a final rule—is not required when agencies issue regulations to implement the annual adjustments to civil penalties that the 2015 Act requires. *See* OMB Memorandum, M–24–07, at pages 3–4. Accordingly, ONRR is issuing the 2024 annual adjustments as a final rule without prior notice or an opportunity for comment and with an effective date immediately upon publication in the **Federal Register**.

List of Subjects in 30 CFR Part 1241

Administrative practice and procedure, Coal, Geothermal energy, Indian—lands, Mineral royalties, Natural gas, Oil and gas exploration, Penalties, Public lands—mineral resources.

Howard M. Cantor,

Director, Office of Natural Resources Revenue.

Authority and Issuance

For the reasons discussed in the preamble, ONRR amends 30 CFR part 1241 as set forth below:

PART 1241—PENALTIES

■ 1. The authority citation for part 1241 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.,* 396a *et seq.,* 2101 *et seq.;* 30 U.S.C. 181 *et seq.,* 351 *et seq.,* 1001 *et seq.,* 1701 *et seq.;* 43 U.S.C. 1301 *et seq.,* 1331 *et seq.,* 1801 *et seq.*

§ 1241.52 [Amended]

■ 2. Amend § 1241.52 by:

■ a. In paragraph (a)(2), removing ''$1,474'' and adding in its place ''$1,522''.

■ b. In paragraph (b) introductory text, removing ''$14,754'' and adding in its place ''$15,232''.

§ 1241.60 [Amended]

■ 3. Amend § 1241.60 by:

■ a. In paragraph (b)(1), removing ''$29,505'' and adding in its place ''$30,461''.

■ b. In paragraph (b)(2), removing ''$73,764'' and adding in its place ''$76,155''.

[FR Doc. 2024–01110 Filed 1–19–24; 8:45 am]

BILLING CODE 4335–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2022–0660; FRL–11572–02–R4]

Air Plan Approval; Florida; Miscellaneous SIP Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving changes to the Florida State Implementation Plan (SIP), submitted by the Florida Department of Environmental Protection (FDEP) on April 1, 2022. The final rule revision corrects definitions, updates and removes outdated references, clarifies rule applicability in several rules within the Florida SIP, and removes methods to determine visible emissions. EPA is approving the changes because they are consistent with the Clean Air Act (CAA or Act).

DATES: This rule is effective February 21, 2024.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2022–0660. All documents in the docket are listed on the *regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9088. Ms. Bell can also be reached via electronic mail at *bell.tiereny@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On April 1, 2022, FDEP submitted a SIP revision to EPA regarding Chapter 62–296, Florida Administrative Code (F.A.C.), *Stationary Sources,* of the Florida SIP. In Florida's April 1, 2022, submission, the State is requesting that EPA approve changes to the following rules in the Florida SIP: Rule 62–296.320(4), *General Pollutant Emission Limiting Standards*; [1] Rule 62–296.406, *Fossil Fuel Steam Generators with Less Than 250 Million Btu Per Hour Heat Input, New and Existing Emissions Units*; Rule 62–296.602, *Primary Lead-Acid Battery Manufacturing Operations*; Rule 62–296.603, *Secondary Lead Smelting Operations*; Rule 62–296.604, *Electric Arc Furnace Equipped Secondary Steel Manufacturing Operations*; Rule 62–296.700, *Reasonably Available Control Technology (RACT) Particulate Matter*; Rule 62–296.702, *Fossil Fuel Steam Generators*; Rule 62–296.704, *Asphalt Concrete Plants*; Rule 62–296.705, *Phosphate Processing Operations*; Rule 62–296.707, *Electric Arc Furnaces*; Rule 62–296.708, *Sweat or Pot Furnaces*; Rule 62–296.711, *Materials Handling, Sizing, Screening, Crushing and Grinding Operations*; and Rule 62–296.712, *Miscellaneous Manufacturing Process Operations*.[2]

[1] On October 13, 2023, the State submitted a letter to EPA withdrawing its request to revise subsection (3) of Rule 62–296.320. Thus, EPA is not acting on Rule 62–296.320(3). For further information, please see the docket for this rulemaking, which includes Florida's October 13, 2023, withdrawal letter.

[2] On April 1, 2022, FDEP submitted a number of SIP revisions to Chapter 62–296, *Stationary Sources.* These other SIP revisions not described herein will be acted on through other rulemakings.

Through a notice of proposed rulemaking (NPRM) published on November 28, 2023 (88 FR 83062), EPA proposed to approve the April 1, 2022, SIP submittal, which corrects definitions, updates and removes outdated references, clarifies applicability in these rules, and removes methods to determine visible emissions in Rules 62–296.320 and 62–296.406. The details of the submission, as well as EPA's rationale for changing these rules, are described in more detail in EPA's November 28, 2023, NPRM. Comments on the November 28, 2023, NPRM were due on or before December 28, 2023. EPA received one comment on the November 28, 2023, NPRM, and it supports EPA's action. No adverse comments were received.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Section I of this preamble, EPA is finalizing the incorporation by reference of Rule 62–296.320(4), *General Pollutant Emission Limiting Standards,* state effective on July 10, 2014; [3] Rule 62–296.406, *Fossil Fuel Steam Generators with Less Than 250 Million Btu Per Hour Heat Input,* state effective on November 5, 2020; Rule 62–296.602, *Primary Lead-Acid Battery Manufacturing Operations,* state effective on July 10, 2014; Rule 62–296.603, *Secondary Lead Smelting Operations,* state effective on July 10, 2014; Rule 62–296.604, *Electric Arc Furnace Equipped Secondary Steel Manufacturing Operations,* state effective on July 10, 2014; Rule 62–296.700, *Reasonably Available Control Technology (RACT) Particulate Matter,* state effective on August 14, 2019; Rule 62–296.702, *Fossil Fuel Steam Generators,* state effective on July 10, 2014; Rule 62–296.704, *Asphalt Concrete Plants,* state effective on July 10, 2014; Rule 62–296.705, *Phosphate Processing Operations,* state effective on July 10, 2014; Rule 62–296.707, *Electric Arc Furnaces,* state effective on July 10, 2014; Rule 62–296.708, *Sweat or Pot Furnaces,* state effective on July 10, 2014; Rule 62–296.711, *Materials Handling, Sizing, Screening, Crushing and Grinding Operations,* state effective on July 10, 2014; and Rule 62–296.712, *Miscellaneous Manufacturing Process Operations,* state effective on July 10, 2014. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[4]

III. Final Action

EPA is approving the changes to Rule 62–296.320(4), *General Pollutant Emission Limiting Standards*; Rule 62–296.406, *Fossil Fuel Steam Generators with Less Than 250 Million Btu Per Hour Heat Input*; Rule 62–296.602, *Primary Lead-Acid Battery Manufacturing Operations*; Rule 62–296.603, *Secondary Lead Smelting Operations*; Rule 62–296.604, *Electric Arc Furnace Equipped Secondary Steel Manufacturing Operations*; Rule 62–296.700, *Reasonably Available Control Technology (RACT) Particulate Matter*; Rule 62–296.702, *Fossil Fuel Steam Generators*; Rule 62–296.704, *Asphalt Concrete Plants*; Rule 62–296.705, *Phosphate Processing Operations*; Rule 62–296.707, *Electric Arc Furnaces*; Rule 62–296.708, *Sweat or Pot Furnaces*; Rule 62–296.711, *Materials Handling, Sizing, Screening, Crushing and Grinding Operations*; and Rule 62–296.712, *Miscellaneous Manufacturing Process Operations,* into the Florida SIP. EPA is approving these changes because they are consistent with the CAA.

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

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

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

See also, footnote 1 regarding subsection (3) of Rule 62–296.320.

[3] Subsections (1), (2), and (3) of Rule 62–296.320 remain in the SIP with a state effective date of March 13, 1996.

[4] 62 FR 27968 (May 22, 1997).

commercial operations or programs and policies.''

FDEP did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 22, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2) of the CAA.

List of Subjects in 40 CFR Part 52

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

Dated: January 16, 2024.

Jeaneanne Gettle,

Acting Regional Administrator, Region 4.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart K—Florida

■ 2. In § 52.520(c), amend the table by revising the entries for ''62–296.320,'' ''62–296.406,'' ''62–296.602,'' ''62–296.603,'' ''62–296.604,'' ''62–296.700,'' ''62–296.702,'' ''62–296.704,'' ''62–296.705,'' ''62–296.707,'' ''62–296.708,'' ''62–296.711,'' and ''62–296.712'' to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED FLORIDA LAWS AND REGULATIONS

State citation (section)	Title/subject	State effective date	EPA approval date	Explanation
*	* *	*	*	* *
Chapter 62–296 Stationary Sources—Emission Standards				
*	* *	*	*	* *
62–296.320	General Pollutant Emission Limiting Standards.	7/10/2014	1/22/2024, [Insert citation of publication].	Except 62–296.320(1), (2), and (3), approved on 6/16/1999, state effective 3/13/1996.
*	* *	*	*	* *
62–296.406	Fossil Fuel Steam Generators with Less Than 250 million Btu per Hour Heat Input.	11/5/2020	1/22/2024, [Insert citation of publication].	
*	* *	*	*	* *
62–296.602	Primary Lead-Acid Battery Manufacturing Operations.	7/10/2014	1/22/2024, [Insert citation of publication].	
62–296.603	Secondary Lead Smelting Operations	7/10/2014	1/22/2024, [Insert citation of publication].	
62–296.604	Electric Arc Furnace Equipped Secondary Steel Manufacturing Operations.	7/10/2014	1/22/2024, [Insert citation of publication].	
*	* *	*	*	* *
62–296.700	Reasonably Available Control Technology (RACT) Particulate Matter.	8/14/2019	1/22/2024, [Insert citation of publication].	
62–296.702	Fossil Fuel Steam Generators	7/10/2014	1/22/2024, [Insert citation of publication].	
62–296.704	Asphalt Concrete Plants	7/10/2014	1/22/2024, [Insert citation of publication].	
62–296.705	Phosphate Processing Operations	7/10/2014	1/22/2024, [Insert citation of publication].	
62–296.707	Electric Arc Furnaces	7/10/2014	1/22/2024, [Insert citation of publication].	
62–296.708	Sweat or Pot Furnaces	7/10/2014	1/22/2024, [Insert citation of publication].	

EPA-APPROVED FLORIDA LAWS AND REGULATIONS—Continued

State citation (section)	Title/subject	State effective date	EPA approval date	Explanation
62–296.711	Materials Handling, Sizing, Screening, Crushing and Grinding Operations.	7/10/2014	1/22/2024, [Insert citation of publication].	
62–296.712	Miscellaneous Manufacturing Process Operations.	7/10/2014	1/22/2024, [Insert citation of publication].	
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[FR Doc. 2024–01030 Filed 1–19–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2021–0615; EPA–R05–OAR–2021–0616; EPA–R05–OAR–2021–0617; FRL–11003–02–R5]

Air Plan Approval; Ohio; Canton, Cleveland, and Steubenville Second 10-Year 2006 24-Hour $PM_{2.5}$ Limited Maintenance Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is approving the limited maintenance plans (LMPs) submitted by the Ohio Environmental Protection Agency (OEPA) for the Canton-Massillon (Stark County), Cleveland-Akron-Lorain (Cuyahoga, Lake, Lorain, Medina, Portage, and Summit Counties) and Steubenville-Weirton Ohio-West Virginia (Jefferson County) maintenance areas. The plans address the second 10-year maintenance periods for particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ($PM_{2.5}$). EPA is approving Ohio's LMP submissions for Canton-Massillon, Cleveland-Akron-Lorain, and Steubenville-Weirton because they provide for the maintenance of the 2006 $PM_{2.5}$ national ambient air quality standards (NAAQS) through the end of the second 10-year portion of the maintenance periods. EPA finds adequate and is approving the LMPs as meeting the appropriate transportation conformity requirements. EPA proposed to approve this action on July 5, 2023, and received no adverse comments.

DATES: This final rule is effective on February 21, 2024.

ADDRESSES: EPA has established dockets for this action under Docket ID No. EPA–R05–OAR–2021–0615 (Canton-Massillon), EPA–R05–OAR–2021–0616 (Cleveland-Akron-Lorain), or EPA–R05–OAR–2021–0617 (Steubenville-Weirton). All documents in the dockets are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19. We recommend that you telephone Cecilia Magos, at (312) 886–7336 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Cecilia Magos, Attainment Planning and Maintenance Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7336, *magos.cecilia@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

I. Background Information

On November 13, 2009, EPA designated the Canton-Massillon (Canton), Cleveland-Akron-Lorain (Cleveland), and Steubenville-Weirton (Steubenville) areas as $PM_{2.5}$ nonattainment areas due to measured violations of the 2006 $PM_{2.5}$ NAAQS (74 FR 58688). On June 18, May 30, and May 25, 2012, OEPA submitted requests to redesignate the Canton, Cleveland, and Steubenville nonattainment areas to attainment of the 2006 $PM_{2.5}$ NAAQS. These submissions included plans to provide for maintenance of the 2006 $2PM_{2.5}$ NAAQS in the areas for 10 years. EPA redesignated the Canton, Cleveland, and Steubenville areas to attainment for the 2006 $PM_{2.5}$ NAAQS on October 22, 2013 (78 FR 62459), and September 18, 2013 (78 FR 57270 and 78 FR 57273), respectively, and approved the associated maintenance plans into the Ohio State Implementation Plan (SIP). The purpose of OEPA'S September 8, 2021, LMP submissions is to fulfill the second 10-year planning requirement of CAA section 175A(b) to ensure $PM_{2.5}$ NAAQS compliance for these areas.

On July 5, 2023 (88 FR 42900), EPA proposed to approve the second 10-year $PM_{2.5}$ LMPs, for the Canton, Cleveland, and Steubenville maintenance areas addressing the 2006 $PM_{2.5}$ maintenance areas. EPA's approval of these LMPs will satisfy the CAA section 175A requirements for the second 10-year period for the Canton, Cleveland, and Steubenville 2006 $PM_{2.5}$ maintenance areas through 2033. Further explanation of the CAA requirements, a detailed analysis of the revisions, and EPA's reasons for proposing approval were provided in the notice of proposed rulemaking (88 FR 42900) and will not be restated here. The public comment period for this proposed rule ended on August 4, 2023. EPA received no comments on the proposal and is finalizing our action as proposed.

II. Final Action

EPA is approving the second 10-year $PM_{2.5}$ LMPs for Canton, Cleveland, and Steubenville 2006 $PM_{2.5}$ maintenance areas submitted by OEPA. EPA's review of the air quality data for the maintenance areas indicates that they continue to show attainment well below the level of the 2006 $PM_{2.5}$ NAAQS and meet all the LMP qualifying criteria set forth in the $PM_{2.5}$ LMP Guidance. The Canton, Cleveland, and Steubenville maintenance areas will no longer be required to perform regional emissions analyses as part of the conformity process, but must meet project-level conformity analyses requirements as

well as other transportation conformity criteria.

III. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993), and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

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

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

OEPA did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA performed an environmental justice analysis, as is described in the section titled ''Environmental Justice Considerations'' in the notice of proposed rulemaking. *See* 88 FR 42906. The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 22, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: January 12, 2024.

Debra Shore,

Regional Administrator, Region 5.

Title 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.1870, the table in paragraph (e) is amended under ''Summary of Criteria Pollutant Maintenance Plan'' by revising the three entries titled ''$PM_{2.5}$ (2006)'' to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED OHIO NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Applicable geographical or non-attainment area	State date	EPA approval	Comments
*	*	*	*	*
Summary of Criteria Pollutant Maintenance Plan				
*	*	*	*	*
$PM_{2.5}$ (2006)	Canton (Stark County)	9/8/2021	1/22/2024, [INSERT **FEDERAL REGISTER** CITATION].	2nd maintenance plan.
$PM_{2.5}$ (2006)	Cleveland (Cuyahoga, Lake, Lorain, Medina, Portage, and Summit Counties).	9/8/2021	1/22/2024, [INSERT **FEDERAL REGISTER** CITATION].	2nd maintenance plan.
$PM_{2.5}$ (2006)	Steubenville-Weirton (Jefferson County)	9/8/2021	1/22/2024, [INSERT **FEDERAL REGISTER** CITATION].	2nd maintenance plan.
*	*	*	*	*

[FR Doc. 2024–00976 Filed 1–19–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2020–0336; FRL–9525–02–OCSPP]

Methoxyfenozide; Pesticide Tolerances; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting amendment.

SUMMARY: EPA issued a final rule in the **Federal Register** of October 11, 2022, establishing tolerances for residues of methoxyfenozide in or on multiple commodities requested by the Interregional Research Project Number 4 (IR–4) under the Federal Food, Drug, and Cosmetic Act (FFDCA). That document inadvertently omitted an instruction to add a tolerance for the commodity ''bean, mung, dry seed''. This document corrects the final regulation.

DATES: Effective on January 22, 2024.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2020–0336, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: Charles Smith, Director, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; email address: *RDFRNotices@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

The Agency included in the October 11, 2022, final rule a list of those who may be potentially affected by this action.

II. What does this correction do?

EPA issued a final rule in the **Federal Register** of October 11, 2022 (87 FR 61259) (FRL–9525–01–OCSPP), that established tolerances for residues of methoxyfenozide in or on multiple commodities and removed tolerances for certain other commodities in response to a petition filed by IR–4. EPA inadvertently omitted an instruction directing the **Federal Register** to add an entry to the table in paragraph (a)(1) of 40 CFR 180.544 for the commodity ''bean, mung, dry seed''. This document corrects that omission and adds the commodity ''bean, mung, dry seed'' to the table in paragraph (a)(1) of 40 CFR 180.544.

III. Why is this correction issued as a final rule?

Section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)) provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this correction final without prior proposal and opportunity for comment, because EPA inadvertently omitted an instruction to the **Federal Register** to add a tolerance for the commodity ''bean, mung, dry seed''. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

IV. Do any of the statutory and Executive order review apply to this action?

No. For a detailed discussion concerning the statutory and Executive order review refer to Unit VI. of the October 11, 2022, final rule.

V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 16, 2024.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, 40 CFR part 180 is corrected by making the following correcting amendment:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.544, amend table 1 to paragraph (a)(1) by adding, in alphabetical order, an entry for the commodity ''bean, mung, dry seed'' to read as follows:

§ 180.544 Methoxyfenozide; tolerances for residues.

(a) * * *
(1) * * *

TABLE 1 TO PARAGRAPH (a)(1)

Commodity	Parts per million
* * * * *	
Bean, mung, dry seed	0.5
* * * * *	

* * * * *

[FR Doc. 2024–01015 Filed 1–19–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 391

[Docket No. FMCSA–2022–0111]

Qualifications of Drivers: Medical Examiner's Handbook Regulatory Guidance

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notification of regulatory guidance.

SUMMARY: FMCSA announces the availability of the Medical Examiner's Handbook (MEH), which includes updates to the Medical Advisory Criteria published in the Code of Federal Regulations (CFR). The MEH provides information about regulatory requirements and guidance to medical examiners (ME) listed on FMCSA's National Registry of Certified Medical Examiners (National Registry) who perform physical qualification examinations of interstate commercial motor vehicle (CMV) drivers. The January 2024 edition of the MEH replaces all previous handbook editions.

DATES: This guidance is applicable on January 22, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 366–4001, *FMCSAMedical@dot.gov*. If you have questions on viewing material in the docket, call Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Availability of Documents

To view comments or any documents mentioned as being available in the docket, go to *https://www.regulations.gov/docket/FMCSA-2022-0111/document* and choose the document to review. To view comments, click ''Browse All Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has statutory authority under 49 U.S.C. 31136(a)(3) and 31149(c)(1)(A)(i)—delegated to the Agency by 49 CFR 1.87(f)—to establish regulations to ensure the physical condition of CMV operators is adequate to enable them to operate the vehicles safely. The guidance in the MEH and Medical Advisory Criteria is related to the physical qualification regulations required by those sections.

The notice and comment rulemaking procedures of the Administrative Procedure Act (APA) do not apply to interpretative rules and general statements of policy (commonly called ''guidance'') (5 U.S.C. 553(b)(A)). The MEH is a guidance document that does not amend any Agency regulation or establish any requirements for MEs or drivers not found in existing regulations. Accordingly, FMCSA was not required under the APA to solicit public comment on the MEH. Nevertheless, to ensure that the MEH provides clear, useful, and relevant information for stakeholders and as encouraged by DOT policy,[1] FMCSA opted to make a draft of the MEH available for public review and comment (87 FR 50282 (Aug. 16, 2022)). Although FMCSA voluntarily provided an opportunity for public comment on the MEH, its decision to do so does not make applicable any of the other procedural requirements in the APA or most of the other statutes or Executive orders that would apply if the opportunity for prior notice and public comment were required.

III. Background

FMCSA's mission is to reduce crashes, injuries, and fatalities involving large trucks and buses. A critical element of FMCSA's safety program is ensuring CMV drivers are in adequate physical condition to operate the vehicles safely. MEs on the National Registry make the determination regarding a driver's physical qualification.

The Federal Motor Carrier Safety Regulations (FMCSRs), in 49 CFR 391.41 through 391.49, provide the basic driver physical qualification standards for interstate CMV operators. MEs make physical qualification determinations on a case-by-case basis and may consider guidance to assist with making those determinations.

FMCSA first posted the MEH to its website in 2008 to provide guidance to MEs on the physical qualification standards in the FMCSRs and the conducting of the physical qualification examination. FMCSA has also issued guidance for MEs in the form of Medical Advisory Criteria, now published at 49 CFR part 391, Appendix A. However, FMCSA withdrew the MEH in 2015 because some of the information was obsolete or was prescriptive in nature, and informed MEs and training organizations that the MEH was no longer in use and should not be considered as Agency guidance.

FMCSA's Medical Review Board (MRB) was established to provide FMCSA with medical advice and recommendations on medical standards and guidelines for the physical qualifications of CMV operators, ME education, and medical research (49 U.S.C. 31149(a)(1)). The MRB, in view of its statutory creation and advisory function, is chartered by DOT as an advisory committee under the Federal Advisory Committee Act (5 U.S.C. Ch. 10). See also *Announcement of Establishment of the Federal Motor Carrier Safety Administration Medical Review Board* (70 FR 57642 (Oct. 3, 2005)). The Secretary appoints MRB's members to reflect expertise in a variety of medical specialties relevant to the driver fitness requirements of FMCSA (49 U.S.C. 31149(a)(2)).

To assist in the development of the MEH, FMCSA, in collaboration with its

[1] Section 14(f) of DOT 2100.6A (Rulemaking and Guidance Procedures) states that it is DOT policy to encourage providing an opportunity for public comment on guidance documents, as public input can be very helpful in formulating and improving the guidance that DOT offers.

Chief Medical Officer, requested advice from the MRB for the Agency to consider via MRB Task Statement 17–1. Specifically, FMCSA asked the MRB to review and provide recommendations for streamlining the MEH. This included removing non-regulatory directive language and updating and removing obsolete information. At public meetings, the MRB discussed the development of the new MEH and Medical Advisory Criteria and reviewed drafts of the MEH. Details of the meetings, including MRB Task Statement 17–1, are posted on the Agency's public website at *https://www.fmcsa.dot.gov/medical-review-board-mrb-meeting-topics*.

After consideration of the public comments and further internal review, FMCSA is now issuing a revised MEH, which includes updated Medical Advisory Criteria, with the goal of providing information about regulatory requirements and guidance for MEs to consider when making physical qualification determinations in conjunction with established best medical practices. In addition to being included in the MEH, the revised Medical Advisory Criteria are being published in Appendix A to 49 CFR part 391 concurrent with this notification. The final version of the criteria is identical in both publications.

The Agency notes that the updated MEH reflects the fact that medical certification under 49 CFR 391.64 for certain drivers who participated in FMCSA's Vision Waiver Study Program is no longer available. On January 21, 2022, FMCSA published a new alternative vision standard and eliminated physical qualification under § 391.64 (87 FR 3390). As of March 22, 2023, all Medical Examiner's Certificates, Form MCSA–5876, issued under § 391.64 became void. FMCSA is aware that references to medical certification under § 391.64 exist in FMCSA's current regulations and forms. The Agency plans to remove obsolete provisions in an upcoming technical amendment rule.

IV. Comments Received

FMCSA received 67 comments in response to the draft MEH from a wide range of commenters, including individuals; medical providers (such as MEs listed on the National Registry and Concentra); drivers; motor carriers (including owner-operators and Schneider National, Inc.); a patient advocacy group (the Alliance of Sleep Apnea Partners (ASAP)); safety advocacy groups (a joint comment was filed by the Truck Safety Coalition (TSC), Citizens for Reliable and Safe Highways (CRASH), and Parents Against Tired Truckers (PATT)); the National Transportation Safety Board (NTSB); five members of Congress who filed a joint comment; and additional associations. Specifically, the medical associations were the American Academy of Sleep Medicine (AASM), the American College of Occupational and Environmental Medicine (ACOEM), and the American Physical Therapy Association. The trade associations were the American Trucking Associations (ATA), the National Association of Small Trucking Companies, the National Beer Wholesalers Association, the Owner-Operator Independent Drivers Association (OOIDA), and the Truckload Carriers Association.

The comments covered a variety of topics. Although the APA notice and comment requirements do not apply to guidance documents, FMCSA provides its responses to some of the comments in the interest of transparency.

General Comments

Some commenters wanted FMCSA to provide more specificity regarding certain types of evaluations and stated the draft MEH is less useful than the previous MEH due to its lack of specificity. Most of the physical qualification standards are broadly stated, and establishing specific testing requirements, such as methodology and acceptable laboratory values, would have to occur through rulemaking. Thus, FMCSA believes the level of specificity in the current version of the MEH is appropriate for a regulatory guidance document.

However, FMCSA made numerous changes to improve the overall clarity, quality, and substance of the MEH based on suggestions from commenters. For example, based on comments from ACOEM and an individual, FMCSA edited several sections to emphasize privacy protections for the individuals being examined, particularly that the right to receive a copy of the Medical Examination Report Form, MCSA–5875, is personal to the individual and does not depend on who paid for or requested the physical qualification examination. In response to a comment from OOIDA, FMCSA also clarified when the individual's consent is required for the ME and the employer to request and receive protected health information about the individual being examined.

FMCSA incorporated a suggestion from OOIDA to add that individuals may request a second opinion and physical qualification examination from another ME if they choose but are expected to provide the same medical information to both MEs. In response to comments from an individual and ACOEM, FMCSA also stated that MEs should visualize the body while examining an individual and conduct an inguinal hernia examination for all males.

ACOEM also asked FMCSA to clarify issues regarding incomplete examinations, and the MEH now states that once an ME begins an examination, the results must be reported to the National Registry even if the examination is not completed. At the request of ACOEM and two MEs, FMCSA clarified issues relating to the use of the determination pending status, including that it does not extend the expiration date of an individual's current Medical Examiner's Certificate, Form MCSA–5876. One commenter, who is both an ME and a commercial driver's license holder, noted that some MEs do not use the most current versions of forms, so FMCSA clarified that using the current form is mandatory.

FMCSA made several other revisions to the MEH in response to comments and suggestions from ACOEM. For example, FMCSA clarified that the alternative vision standard is applicable only if the worse eye cannot be corrected to meet the distant visual acuity standard with corrective lenses. FMCSA added that if the individual meets the vision standard while wearing corrective lenses, it is not necessary to document the distant visual acuity without corrective lenses. FMCSA also added that when it is indicated that a medical exemption is required, the Medical Examiner's Certificate, Form MCSA–5876, is not valid unless the individual applies for and is issued the medical exemption from FMCSA. It was emphasized that MEs may certify an individual for less than the maximum period whenever they determine they need to monitor the individual more frequently. FMCSA moved the discussion of renal dialysis from the section on cardiovascular diseases to the section on diabetes because diabetes leads to a greater incidence of kidney disease than cardiovascular disease does.

In addition, ACOEM requested that FMCSA establish a regular cadence for updating the MEH. FMCSA intends to update the MEH periodically.

Concentra and ACOEM questioned why certain medical expert panel reports and other guidance were included in the draft MEH, while others were not. After reviewing the comments, FMCSA agrees that including some reports but not others has the potential to create confusion.

The more recent evidence reports and medical expert panel reports are readily available on FMCSA's website at *https://www.fmcsa.dot.gov/regulations/medical/reports-how-medical-conditions-impact-driving.* Thus, FMCSA decided to remove references to these additional sources of information from the MEH. FMCSA notes that evidence reports and medical expert panel reports are disseminated by FMCSA in the interest of information exchange and are not official Agency guidance.

FMCSA revised the sections on narcolepsy and idiopathic hypersomnia based on comments by AASM and an individual. FMCSA deleted the references to obstructive sleep apnea (OSA) and added that the conditions should be diagnosed with an overnight lab-based sleep study followed by a Multiple Sleep Latency Test the next morning.

FMCSA made several changes in the section relating to the scheduled drug and alcohol standards in light of comments by *SAPList.com.* For example, FMCSA clarified that DOT-regulated drug and alcohol testing is not part of the physical qualification examination but may be conducted concurrently with the examination for pre-employment or other authorized purposes. FMCSA also clarified that substance abuse professionals are not certified and not part of non-DOT drug testing. FMCSA also provided a more in-depth discussion of the intent of Questions 31 and 32 on the Medical Examination Report Form, MCSA–5875.

Obstructive Sleep Apnea (OSA)

Of the 67 comments received, 36 referenced OSA. Of these, 27 commented only on OSA.

Several commenters, including ATA and OOIDA, indicated that the guidance in the MEH relating to OSA runs afoul of Public Law 113–45 (127 Stat. 557 (Oct. 15, 2013), 49 U.S.C. 31305 note), which provides FMCSA may implement or enforce a requirement providing for the screening, testing, or treatment of CMV operators for sleep disorders only if the requirement is adopted pursuant to a rulemaking proceeding. When drafting the MEH, FMCSA was mindful of Public Law 113–45. However, Public Law 113–45 is not applicable here because the MEH offers only guidance and FMCSA has not adopted requirements regarding OSA screening, testing, or treatment. Because this is not a rulemaking proceeding, FMCSA cannot accommodate the requests by commenters that FMCSA require MEs to use specific, objective criteria for OSA screening, treatment, and treatment evaluation.

FMCSA has gone to great efforts throughout the MEH to distinguish between regulatory requirements and non-binding guidance. The MEH states that MEs are free to choose whether to utilize guidance and recommendations as a basis for decision-making and that when the terms ''recommend,'' ''consider,'' ''may,'' ''should,'' or ''could'' are used in the MEH, they are used in a recommendatory or permissive sense and relate to guidance. In particular, the MEH states that the FMCSRs do not include requirements for MEs to screen individuals for OSA or to recommend that an individual be referred for OSA testing and do not include preferred diagnostic testing methods, treatment methods, or requirements by which to assess compliance with treatment. Instead, the MEH presents various considerations for ME when making a physical qualification determination.

Several commenters, including ASAP, ATA, CRASH, PATT, and TSC, indicated FMCSA should initiate a rulemaking to develop specific OSA screening, testing, and treatment requirements for CMV drivers rather than to issue more guidance. The notice issued in 2017 withdrawing an advance notice of proposed rulemaking explains FMCSA's reasons for not proceeding with a rulemaking on OSA (see Evaluation of Safety Sensitive Personnel for Moderate-to-Severe Obstructive Sleep Apnea, 82 FR 37038 (Aug. 8, 2017)).

Several comments were received regarding the link in the MEH to the November 21, 2016, joint MRB and Motor Carrier Safety Advisory Committee recommendations regarding OSA. FMCSA continues to include the link in the final MEH for ease of access. As suggested by NTSB, FMCSA added text to state that the joint recommendations includes information on screening and diagnosing individuals with moderate-to-severe OSA, and not just certifying such individuals.

AASM, ASAP, OOIDA, and an individual questioned why the draft MEH included a window of 3 to 5 years for retesting individuals diagnosed with moderate-to-severe OSA treated with continuous positive airway pressure. FMCSA removed the recommendation of a time frame for retesting. FMCSA added that ''untreated moderate-to-severe OSA is associated with cardiovascular and cerebrovascular morbidity, metabolic disease, and mortality'' in response to a comment from AASM.

AASM recommended that FMCSA remove ''moderate-to-severe'' from the statement that untreated moderate-to-severe OSA may contribute to certain adverse conditions because they may be experienced at any level of OSA severity. FMCSA determined that the focus of the guidance is appropriately on moderate-to-severe OSA because it is likely to interfere with the ability to control and drive a CMV safely as required by the applicable standard.

Several commenters stated that MEs should not consider a single factor as being determinative with respect to whether an individual needs to be screened for OSA. FMCSA agrees and reiterates that the MEH provides guidance stating that the use of multiple risk factors is a reasonable approach to identify individuals at risk for moderate-to-severe OSA, rather than relying only on a single factor. The MEH guidance leaves it to the ME to determine whether an individual needs to be screened based on the individual circumstances.

AASM and ASAP recommended adding that moderate-to-severe OSA is to be ''adequately treated'' or ''treated effectively.'' As indicated in the MEH, determining whether treatment is adequate or effective should be left to the ME to determine based on the individual circumstances.

High Blood Pressure

Several commenters, including ACOEM and Concentra, stated that the hypertension table from the 2013 expert panel recommendations titled ''Medical Examiner Physical Qualification Standards and Clinical Guidelines for Cardiovascular Disease and Commercial Motor Vehicle Driver Safety'' was vague, confusing, and difficult to understand. FMCSA agrees that the table has the potential to create confusion. FMCSA therefore decided to remove the hypertension table from the MEH and to continue the current guidance in the Medical Advisory Criteria. FMCSA is currently conducting research on this topic and will update the MEH based on the final report if warranted.

Non-Insulin-Treated Diabetes Mellitus

The NTSB and ACOEM stated that the information provided for non-insulin-treated diabetes is inadequate and that there should be some guidance on the complications and co-morbidities of non-insulin-treated diabetes mellitus. FMCSA does not have a medical standard specific to non-insulin-treated diabetes mellitus, and therefore cannot provide the level of specificity sought by these commenters.

However, FMCSA provided some additional information, including considerations for MEs when making a physical qualification determination for an individual with non-insulin-treated diabetes mellitus. In addition, FMCSA is in the process of seeking approval from the Office of Management and Budget for a new Non-Insulin-Treated Diabetes Mellitus Assessment Form. If approved, FMCSA will post the form on its website for MEs to use as a voluntary, optional tool to request additional information, with the individual's consent, when making a physical qualification determination for an individual with non-insulin-treated diabetes mellitus. It will also update the MEH with this information if approved.

Out of Scope Comments

Some commenters requested changes to the MEH that are beyond the scope of this guidance, including some that would require rulemaking and changes to existing law.

V. Publication of the Regulatory Guidance

Each guidance document issued by FMCSA must be published on a publicly accessible DOT internet website on the date of issuance (49 U.S.C. 113 note).[2] Accordingly, in addition to being available in this docket, the MEH will be available in FMCSA's Guidance Portal (*https://www.fmcsa.dot.gov/guidance*) and on FMCSA's website at *https://www.fmcsa.dot.gov/regulations/medical/medical-regulations-and-guidance-resource-links* and on the National Registry website at *https://nationalregistry.fmcsa.dot.gov/resource-center*.

FMCSA expects to review the guidance no later than 5 years after it is published and will consider at that time whether the guidance should be withdrawn, reissued, or incorporated into FMCSA's regulations.

Robin Hutcheson,

Administrator.

[FR Doc. 2024–01056 Filed 1–19–24; 8:45 am]

BILLING CODE 4910–EX–P

[2] See section 5203(a)(2)(A) and (a)(3) of the Fixing America's Surface Transportation Act, Public Law 114–94, 129 Stat. 1312, 1535 (Dec. 4, 2015).

Proposed Rules

Federal Register
Vol. 89, No. 14
Monday, January 22, 2024

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.

U.S. INTERNATIONAL DEVELOPMENT FINANCE CORPORATION

2 CFR Chapter XVI

Nonprocurement Suspension and Debarment; Correction

AGENCY: U.S. International Development Finance Corporation.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a U.S. International Development Finance Corporation (DFC) proposed rule published in the **Federal Register** on January 5, 2024, regarding nonprocurement suspension and debarment (S&D). This correction clarifies that contracts where DFC has a privity of contract (first-tier procurement) should be covered transactions under the nonprocurement S&D requirements.

DATES: January 22, 2024.

FOR FURTHER INFORMATION CONTACT: Agency Submitting Officer: Deborah Papadopoulos, (202) 357–3979, *Email: fedreg@dfc.gov.*

SUPPLEMENTARY INFORMATION:

Correction

§ 1600.220 [Corrected]

■ In the proposed rule, FR Doc. 2023–28838, in the issue of January 5, 2024, on page 715, in the third column, § 1600.220 is corrected by removing ''None'' and adding ''First-tier procurements (*i.e.,* primary contracts) under a covered nonprocurement transaction are covered transactions'' in its place.

Dated: January 17, 2024.

Dev Jagadesan,

Deputy General Counsel, Office of the General Counsel, U.S. International Development Finance Corporation.

[FR Doc. 2024–01112 Filed 1–19–24; 8:45 am]

BILLING CODE 3210–02–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AO48

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[REG–122319–22]

RIN 1545–BQ55

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210–AC17

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

45 CFR Part 149

[CMS–9897–N]

RIN 0938–AV15

Federal Independent Dispute Resolution Operations; Reopening of Comment Period

AGENCY: Office of Personnel Management; Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Proposed rules; reopening of comment period.

SUMMARY: This document reopens the comment period for the proposed rules entitled ''Federal Independent Dispute Resolution Operations'' that appeared in the November 3, 2023, issue of the **Federal Register**. The comment period for the proposed rules, which closed on January 2, 2024, is reopened from January 22, 2024 to February 5, 2024.

DATES: The comment period for the proposed rules published November 3, 2023, at 88 FR 75744, is reopened. To be assured consideration, comments must be received at one of the addresses provided below, no later than February 5, 2024.

ADDRESSES: Written comments may be submitted to the addresses specified below. Any comment that is submitted will be shared among the Department of the Treasury, the Department of Labor, the Department of Health and Human Services (the Departments), and the Office of Personnel Management. Please do not submit duplicates.

Comments will be made available to the public. Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments are posted on the internet exactly as received and can be retrieved by most internet search engines. No deletions, modifications, or redactions will be made to the comments received, as they are public records. Comments may be submitted anonymously.

In commenting, please refer to file code RIN 0938–AV15. Because of staff and resource limitations, the Departments cannot accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *https://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9897–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9897–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Padma Babubhai Shah, Office of

Personnel Management, at 202–606–4056; Shira B. McKinlay, Internal Revenue Service, Department of the Treasury, at 202–317–5500; Elizabeth Schumacher or Shannon Hysjulien, Employee Benefits Security Administration, Department of Labor, at 202–693–8335; Zarah Ghiasuddin or Bryan Kirk, Centers for Medicare & Medicaid Services, Department of Health and Human Services, at 301–492–4308.

Customer Service Information: Information from the Office of Personnel Management (OPM) on health benefits plans offered under the Federal Employees Health Benefits (FEHB) Program can be found on the OPM website (*https://www.opm.gov/healthcare-insurance/healthcare/*). Individuals interested in obtaining information from the Department of Labor (DOL) concerning employment-based health coverage laws may call the Employee Benefits Security Administration (EBSA) Toll-Free Hotline at 1–866–444–EBSA (3272) or visit the DOL's website (*www.dol.gov/agencies/ebsa*). In addition, information from the Department of Health and Human Services (HHS) on private health insurance coverage and coverage provided by non-Federal governmental group health plans can be found on the Centers for Medicare & Medicaid Services (CMS) website (*https://www.cms.gov/marketplace*), information on health care reform can be found at *https://www.healthcare.gov,* and information on surprise medical bills can be found at *https://www.cms.gov/nosurprises.*

SUPPLEMENTARY INFORMATION: The Departments of the Treasury, Labor, and HHS (collectively, the Departments) and the Office of Personnel Management (OPM) published proposed rules entitled ''Federal Independent Dispute Resolution Operations,'' which appeared in the **Federal Register** on November 3, 2023 (88 FR 75744). In the proposed rules, the Departments and OPM proposed requirements related to the Federal independent dispute resolution (IDR) process established under the No Surprises Act, including new requirements for disclosing information along with the initial payment or notice of denial of payment for certain items and services subject to the surprise billing protections in the No Surprises Act and when initiating the Federal IDR process and the provision of certain Claim Adjustment Reason Codes (CARCs) and Remittance Advice Remark Codes (RARCs) with paper or electronic remittances. Additionally, those proposed rules would define bundled payment arrangements and would amend certain requirements related to the open negotiation period, initiation of the Federal IDR process, eligibility determinations, batched disputes, extensions due to extenuating circumstances, selection of the certified IDR entity, and the collection of administrative fees and certified IDR entity fees. Lastly, the proposed rules would require plans and issuers to register in the Federal IDR portal.

The Departments published the final rules entitled ''Federal Independent Dispute Resolution Process Administrative Fee and Certified IDR Entity Fee Ranges'' (the IDR Fees final rules), which appeared in the **Federal Register** on December 21, 2023 (88 FR 88494). The IDR Fees final rules amend existing regulations to provide that the administrative fee amount charged by the Departments to participate in the Federal IDR process and the ranges for certified IDR entity fees will be established by the Departments in notice and comment rulemaking. The preamble to the IDR Fees final rules also sets forth the methodology used to calculate the administrative fee and the considerations used to develop the certified IDR entity fee ranges. The IDR Fees final rules also finalize the amount of the administrative fee and the certified IDR entity fee ranges for disputes initiated on or after the effective date of the IDR Fees final rules.

In addition, the preamble to the IDR Fees final rules addresses how changes in that rulemaking relate to the proposals contained in the Federal Independent Dispute Resolution Operations proposed rules, for which the comment period closed on January 2, 2024. To provide additional time for interested parties to consider and comment on any implications of the IDR Fees final rules, the Departments and OPM are reopening the comment period on the Federal Independent Dispute Resolution Operations proposed rules for all comments from January 22, 2024 to February 5, 2024. To be assured consideration, comments on the proposed rules must be received no later than February 5, 2024.

Laurie Bodenheimer,

Associate Director, Healthcare and Insurance, Office of Personnel Management.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement, Internal Revenue Service.

Lisa M. Gomez,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2024–01072 Filed 1–17–24; 4:15 pm]

BILLING CODE 4120–01–P; 6325–6–P; 4830–01–P; 4510–29–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0029; Project Identifier MCAI–2023–01182–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2021–20–08, which applies to certain Airbus SAS Model A318, A319, A320, A321, A330–200, A330–200 Freighter, A330–300, A330–800, A330–900, A340–200, A340–300, A340–500, A340–600, and A380–800 series airplanes. AD 2021–20–08 requires replacing certain parts manufacturer approval (PMA) nickel-cadmium (Ni-Cd) batteries with serviceable Ni-Cd batteries. Since the FAA issued AD 2021–20–08, it was determined that the on-wing preservation procedures originally provided in the service information did not ensure the expected preservation of the battery capacity. This proposed AD would add airplanes to the applicability and require replacement of certain affected parts with serviceable parts as a precondition for return to service of airplanes from storage or parking, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by March 7, 2024.

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–2024–0029; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For the EASA AD identified in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *Ads@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2024–0029.
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3225; email *dan.rodina@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2024–0029; Project Identifier MCAI–2023–01182–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dan Rodina, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3225; email *dan.rodina@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2021–20–08, Amendment 39–21746 (86 FR 57025, October 14, 2021) (AD 2021–20–08), for all Airbus SAS Model A318, A319, A320, A321, A330–200, A330–200 Freighter, A330–300, A330–800, A330–900, A340–200, A340–300, A340–500, A340–600, and A380–800 series airplanes. AD 2021–20–08 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2020–0274, dated December 10, 2020, to correct an unsafe condition.

AD 2021–20–08 requires replacing certain PMA nickel-cadmium (Ni-Cd) batteries with serviceable Ni-Cd batteries or maintaining the electrical storage capacity of those PMA Ni-Cd batteries during airplane storage or parking. The FAA issued AD 2021–20–08 to address reduced capacity of certain Ni-Cd batteries, which could lead to reduced battery endurance performance and possibly result in failure to supply the minimum essential electrical power during abnormal or emergency conditions.

Actions Since AD 2021–20–08 Was Issued

Since the FAA issued AD 2021–20–08, EASA superseded EASA AD 2020–0274, dated 10 December 2020, and issued EASA AD 2023–0196, dated November 10, 2023 (EASA AD 2023–0196) (also referred to as the MCAI), to correct an unsafe condition for all:

- Airbus SAS Model A300 B4–2C, B4–102, B4–103, B4–120, B4–203, B4–220;
- Airbus SAS Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes;
- Airbus SAS Model A300 B4–605R and B4–622R airplanes;
- Airbus SAS Model A300 C4–203, C4–620, and C4–605R variant F airplanes;
- Airbus SAS Model A300 F4–203, F4–605R, F4–608ST, and F4–622R airplanes;
- Airbus SAS Model A310–203, –221, –222, –204, –203C, –322, –304, –324, –308, and –325 airplanes;
- Airbus SAS Model A318–111, –112, –121, and –122 airplanes;
- Airbus SAS Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N airplanes;
- Airbus SAS Model A320–211, –212, –214, –215, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes;
- Airbus SAS Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes;
- Airbus SAS Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, –343, –743L, –841, and –941 airplanes;
- Airbus SAS Model A340–211, –212, –213, –311, –312, –313, –541, –542, –642, and –643 airplanes;
- Airbus SAS Model A350–941 and A350–1041 airplanes; and
- Airbus SAS Model A380–841, –842, and –861 airplanes.

Model A300 B4–102, A300 B4–120, A300 B4–220, A300 C4–203, A300 C4–620, A300 F4–203, A300 F4–608ST, A310–203C, A310–308, A320–215, A330–743L, A340–542, and A340–643 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability. The MCAI states that it was determined that the on-wing preservation procedures originally provided for these airplanes did not

ensure the expected preservation of the battery capacity.

The FAA is proposing this AD to address the potential for reduced battery capacity. This condition, if not addressed, could lead to reduced battery endurance performance, possibly resulting in failure to supply the minimum essential electrical power during abnormal or emergency conditions. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–0029.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0196 specifies procedures for replacing certain PMA Ni-Cd batteries with serviceable Ni-Cd batteries. EASA AD 2023–0196 adds Model A300 series airplanes; Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes); Model A310 series airplanes; and Model A350–941 and –1041 airplanes to the applicability. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2023–0196 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2023–0196 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0196 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0196 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2023–0196. Service information required by EASA AD 2023–0196 for compliance will be available at *regulations.gov* under Docket No. FAA–2024–0029 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1,814 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
New proposed actions	5 work-hours × $85 per hour = $425	$0	$425	$770,950

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2021–20–08, Amendment 39–21746 (86 FR 57025, October 14, 2021); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2024–0029; Project Identifier MCAI–2023–01182–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 7, 2024.

(b) Affected ADs

This AD replaces AD 2021–20–08, Amendment 39–21746 (86 FR 57025, October 14, 2021) (AD 2021–20–08).

(c) Applicability

This AD applies to all Airbus SAS airplanes identified in paragraphs (c)(1) through (14) of this AD, certificated in any category.

(1) Model A300 B4–2C, B4–103, and B4–203 airplanes.

(2) Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes.

(3) Model A300 B4–605R and B4–622R airplanes.

(4) Model A300 C4–605R variant F airplanes.

(5) Model A300 F4–605R and F4–622R airplanes.

(6) Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes.

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

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

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

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

(11) Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, –343, –841, and –941 airplanes.

(12) Model A340–211, –212, –213, –311, –312, –313, –541, and –642 airplanes.

(13) Model A350–941 and A350–1041 airplanes.

(14) Model A380–841, –842, and –861 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical Power.

(e) Unsafe Condition

This AD was prompted by a report that repetitive disconnection and reconnection of certain nickel-cadmium (Ni-Cd) batteries during airplane parking or storage could lead to a reduction in capacity of those batteries. The FAA is issuing this AD to address reduced capacity of certain Ni-Cd batteries. The unsafe condition, if not addressed, could lead to reduced battery endurance performance and possibly result in failure to supply the minimum essential electrical power during abnormal or emergency conditions.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0196, dated November 10, 2023 (EASA AD 2023–0196).

(h) Exceptions to EASA AD 2023–0196

(1) Where EASA AD 2023–0196 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0196.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(2) of this AD, if any service information referenced in EASA AD 2023–0196 that contains paragraphs that are labeled as RC, the instructions in RC paragraphs, including subparagraphs under an RC paragraph, must be done to comply with this AD; any paragraphs, including subparagraphs under those paragraphs, that are not identified as RC are recommended. The instructions in paragraphs, including subparagraphs under those paragraphs, not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the instructions identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to instructions identified as RC require approval of an AMOC.

(j) Additional Information

For more information about this AD, contact Dan Rodina, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3225; email *dan.rodina@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0196, dated November 10, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0196, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

(5) You may view this 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 January 12, 2024.

Victor Wicklund,

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

[FR Doc. 2024–00995 Filed 1–19–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–0020; Airspace Docket No. 23–AAL–19]

RIN 2120–AA66

Revocation of Jet Route J–179 and Amendment of United States Area Navigation Route Q–10 in the Vicinity of Emmonak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revoke Jet Route J–179 in its entirety and amend United States Area Navigation Route (RNAV) Q–10 in the vicinity of Emmonak, AK. The FAA is proposing this action due to the pending decommissioning of the Aniak, AK, Nondirectional Radio Beacon (NDB) and the St Marys, AK, NDB.

DATES: Comments must be received on or before March 7, 2024.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2024–0020 and Airspace Docket No. 23–AAL–19 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific segment of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Western Service Center, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

Incorporation by Reference

Jet Routes are published in paragraph 2004 and United States Area Navigation Routes are published in paragraph 2006 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

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

Background

In 2003, Congress enacted the Vision 100-Century of Aviation Reauthorization Act (Pub. L. 108–176), which established a joint planning and development office in the FAA to manage the work related to the Next Generation Air Transportation System (NextGen). Today, NextGen is an ongoing FAA-led modernization of the nation's air transportation system to make flying safer, more efficient, and more predictable.

In support of NextGen, this proposal is part of an ongoing, large, and comprehensive T-route modernization project in the state of Alaska. The project mission statement states: ''To modernize Alaska's Air Traffic Service route structure using satellite-based navigation development of new T-routes and optimization of existing T-routes will enhance safety, increase efficiency and access, and will provide en route continuity that is not subject to the restrictions associated with ground-based airway navigation.'' As part of this project, the FAA evaluated the existing Colored Airway structure for: (a) direct replacement (*i.e.,* overlay) with a T-route that offers a similar or lower Minimum En route Altitude (MEA) or Global Navigation Satellite System (GNSS) MEA; (b) the replacement of the colored airway with a T-route in an optimized but similar geographic area, while retaining similar or lower MEA; or (c) removal with no route structure (T-route) restored in that area because the value was determined to be insignificant.

The aviation industry/users have indicated a desire for the FAA to transition the Alaskan en route navigation structure away from dependency on NDBs and move to develop and improve the RNAV route structure.

Jet Route J–179 extends between the Middleton Island, AK, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) and the Emmonak, AK, VOR/DME. The decommissioning of the Aniak and St Marys NDBs will leave portions of J–179 unusable. To mitigate the loss of J–179, the FAA is proposing to amend RNAV route Q–10. The proposed amendment to Q–10 would extend the route along essentially the same track as the current J–179. The only difference between the current J–179 and the proposed Q–10 is that the proposed track for Q–10 would not include the St Marys NDB. Instead, Q–10 would extend directly between the Emmonak NDB and the Aniak NDB.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to revoke Jet Route J–179 in its entirety and amend United States Area Navigation Route Q–10 in the vicinity of Emmonak, AK.

J–179: J–179 extends between the Middleton Island, AK, VOR/DME and the Emmonak, AK, VOR/DME. The FAA is proposing to revoke J–179 in its entirety.

Q–10: Q–10 extends between the Kukuliak, AK, VOR/DME and the Emmonak, AK, VOR/DME. As amended, Q–10 would extend between the Kukuliak, AK, VOR/DME and the Middleton Island, AK, VOR/DME.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 2004 Jet Routes.

* * * * *

J–179 [Removed]

* * * * *

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q–10 Kukuliak, AK (ULL) to Middleton Island, AK (MDO) [Amended]

Kukuliak, AK (ULL)	VOR/DME	(Lat. 63°41′32.39″ N, long. 170°28′11.65″ W)
Emmonak, AK (ENM)	VOR/DME	(Lat. 62°47′04.52″ N, long. 164°29′15.12″ W)
ANIAK, AK	FIX	(Lat. 61°37′02.22″ N, long. 159°37′52.61″ W)
Sparrevohn, AK (SQA)	VOR/DME	(Lat. 61°05′54.89″ N, long. 155°38′04.49″ W)
Kenai, AK (ENA)	VOR/DME	(Lat. 60°36′52.93″ N, long. 151°11′42.87″ W)
Middleton Island, AK (MDO)	VOR/DME	(Lat. 59°25′18.50″ N, long. 146°21′00.05″ W)

* * * * *

Issued in Washington, DC, on January 11, 2024.

Frank Lias,

Manager, Rules and Regulations Group.

[FR Doc. 2024–00806 Filed 1–19–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648–BM40

Fisheries of the Exclusive Economic Zone Off Alaska; Amendment 126 to the Fishery Management Plans for Groundfish of the Bering Sea/Aleutian Islands Management Area and Amendment 114 to the Fishery Management Plan for Groundfish of the Gulf of Alaska To Expand Electronic Monitoring to the Pollock Fisheries

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

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) submitted Amendment 126 to the Fishery Management Plans for Groundfish of the Bering Sea/Aleutian Islands Management Area (BSAI FMP) and Amendment 114 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP). If approved, Amendments 126/114 would expand electronic monitoring (EM) to pelagic trawl pollock catcher vessels and tenders delivering to shoreside processors or stationary floating processors in the Bering Sea, Aleutian

Islands, and Gulf of Alaska. Amendments 126/114 are intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the BSAI FMP, and the GOA FMP.

DATES: Comments must be received no later than March 22, 2024.

Public Meetings:

1. February 28, 2024, 6 p.m. Alaska local time, Kodiak, AK.

2. March 12, 2024, 6 p.m. Pacific time, Virtual (see **ADDRESSES** for link).

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2023–0125, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go *to https://www.regulations.gov* and type NOAA–NMFS–2023–0125 in the Search box (*note:* copying and pasting the FDMS Docket Number directly from this document may not yield search results). Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Gretchen Harrington, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.
- *Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 126 to the BSAI FMP and Amendment 114 to the GOA FMP, the Environmental Assessment/Regulatory Impact Review prepared for this action (the Analysis), and the Finding of No Significant Impact prepared for this action may be obtained from *https://www.regulations.gov* and the NMFS Alaska Region website at *https://www.fisheries.noaa.gov/region/alaska.*

Pursuant to section 313(c) of the Magnuson-Stevens Act, NMFS will hold public hearings to accept oral and written comments on the proposed rule during the public comment period. The first public hearing will be held at the Kodiak Fisheries Research Center, 301 Research Court, Kodiak, Alaska 99615. The second public hearings will be held virtually, available at *https://meet.google.com/gcz-emgh-kkw.*

FOR FURTHER INFORMATION CONTACT: Joel Kraski, *joel.kraski@noaa.gov,* (907) 586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each regional fishery management council submit any FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment. This notice announces that proposed Amendment 126 to the BSAI FMP and Amendment 114 to the GOA FMP are available for public review and comment.

The Council prepared, and the Secretary approved, the BSAI FMP and GOA FMP under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). The BSAI FMP and GOA FMP are implemented by regulations governing U.S. fisheries at 50 CFR parts 600 and 679.

Amendments 126/114 would amend the Council's fisheries research plan prepared under the authority of section 313 of the Magnuson-Stevens Act. NMFS published regulations implementing the plan on November 21, 2012 (77 FR 70062) and integrated EM into the plan on August 8, 2017 (82 FR 36991). The Secretary implements the fisheries research plan through the North Pacific Observer Program (Observer Program). Its purpose is to collect data necessary for the conservation, management, and scientific understanding of the groundfish and halibut fisheries off Alaska.

The Council's intent in recommending Amendments 126/114 is to improve salmon accounting, reduce monitoring costs, improve the quality of monitoring data, and modify current retention and/or discard requirements as necessary to achieve these objectives in association with catcher vessels using trawl gear in the BS, AI, and GOA Pollock fisheries along with associated tender vessels and processors.

Amendment 126 would add to section 3.9.2 of the BSAI FMP and Amendment 114 would add to section 3.9.2 of the GOA FMP to allow the use of EM systems to meet fisheries monitoring requirements under the Observer Program.

Amendments 126/114 would create an EM option—the trawl EM category—for pelagic trawl pollock catcher vessels and tender vessels delivering to a shoreside processor or stationary floating processor in the Bering Sea, Aleutian Islands, and Gulf of Alaska. The BSAI and GOA FMPs currently authorize the use of EM in the partial coverage category, but not the full observer coverage category of the Observer Program. Under this voluntary program, eligible catcher vessels and tender vessels would apply annually for entry into the trawl EM category. Shoreside processors and stationary floating processors would indicate that they intend to receive trawl EM category deliveries during their annual Catch Monitoring Control Plan process.

Amendments 126/114 would allow for monitoring to be conducted by an EM system on board both full and partial coverage trawl catcher vessels combined with sampling by observers stationed at shoreside or stationary floating processors. For fishing trips in the trawl EM category, the responsibilities normally conducted by at-sea observers would be completed by observers stationed at the shoreside or stationary floating processor plant. All fishing trips would operate under improved retention (*i.e.,* minimize discards to the greatest extent practicable) and be recorded by EM as a compliance tool; all video is reviewed and verified using logbook entries to ensure the program elements are followed.

The use of EM and maximized retention on vessels would allow for observers to collect unbiased data at the shoreside or stationary floating processors. Shoreside and stationary floating processors would indicate their intent to receive EM deliveries during Catch Monitoring Control Plan approval process to join the trawl EM program annually. Shoreside and stationary floating processors would also indicate whether they expect to use tender vessels.

NMFS is soliciting public comments on proposed Amendments 126/114 through the end of the comment period (see **DATES**). NMFS intends to publish in the **Federal Register** and seek public comment on a proposed rule that would implement Amendments 126/114 following NMFS's evaluation of the proposed rule under the Magnuson-Stevens Act.

Section 313 of the Magnuson-Stevens Act requires NMFS to provide a 60-day public comment period on the proposed rule and conduct a public hearing in

each state represented on the Council for the purpose of receiving public comment on the proposed regulations. The states represented on the Council are Alaska, Oregon, and Washington. NMFS will conduct a public hearing at a physical location in Alaska, and hold a virtual public hearing for Washington and Oregon (see **DATES**).

People wanting to make an oral statement for the record at the a public hearing are encouraged to submit a written copy of their statement to NMFS using one of the methods identified under **ADDRESSES**. If attendance at the public hearing is large, the time allotted for individual oral statements may be limited. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to NMFS. Respondents do not need to submit the same comments on Amendments 126/114 and the proposed rule. All relevant written comments received by the end of the applicable comment period, whether specifically directed to the FMP amendments or this proposed rule, will be considered by NMFS in the approval/disapproval decision for Amendments 126/114 and addressed in the response to comments in the final decision. Comments received after the end of the comment period may not be considered in the approval/disapproval decision on Amendment 126/114. To be certain of consideration, comments would need to be received, not just postmarked or otherwise transmitted, by the last day of the comment period (see **DATES**).

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

Dated: January 17, 2024.

Everett Wayne Baxter,

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

[FR Doc. 2024–01120 Filed 1–19–24; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 89, No. 14
Monday, January 22, 2024

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Advisory Committee Public Meeting

AGENCY: Agency for International Development (USAID).

ACTION: Notice of Advisory Committee Public Meeting and request for public comment.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), notice is hereby given of Advisory Committee on Voluntary Foreign Aid (ACVFA) public meeting on February 7th, 2024.

ADDRESSES: To view additional information related to ACVFA please visit *http://www.usaid.gov/who-we-are/organization/advisory-committee.*

This event will feature a conversation between the USAID Administrator and the ACVFA Chair, as well as two discussion panels featuring ACVFA members on key Agency priorities such as democratic governance, food security, climate change, private sector engagement, and inclusive development.

You may submit comments regarding the work of ACVFA to *acvfa@usaid.gov* or the committee's public comment form at: *https://www.usaid.gov/who-we-are/organization/advisory-committee/acvfa-contact-us.* Include ''Public Comment, ACVFA Meeting, February 7, 2023'' in the subject line. All public comments and questions will be included in the official record of the meeting and posted publicly on the USAID website.

American Sign Language interpretation will be provided during the public meeting. If you require a reasonable accommodation, please email *reasonableaccommodations@usaid.gov.* Include ''Request for Reasonable Accommodation, ACVFA Meeting, February 7, 2024'' in the subject line.

The entirety of this meeting is open to the public. You may register to watch the live public meeting at this link: *https://usaid.zoomgov.com/webinar/register/WN_V5mFIn5jS_6p3G8Iz7n0bw.*

FOR FURTHER INFORMATION CONTACT: Sophia Lajaunie, Designated Federal Officer for ACVFA, at *slajaunie@usaid.gov* or 202–531–9819.

SUPPLEMENTARY INFORMATION: ACVFA is USAID's external advisory committee, bringing together representatives from private voluntary organizations, nongovernmental organizations (NGOs), academia, civil society, and the private sector. Its membership of internationally recognized leaders represent a broad range of sectors who support the Agency's mission and goals by advising on key development challenges and priorities.

Pursuant to its charter, ACVFA is holding an annual public meeting on February 7, 2024, from 10:30 a.m. to 12:00 p.m. ET. This meeting is free and open to the public. The Committee welcomes public participation and comment before, during, and after the meeting via the web and/or email addresses provided above.

Sophia Lajaunie,

ACVFA Designated Federal Officer.

[FR Doc. 2024–01083 Filed 1–19–24; 8:45 am]

BILLING CODE 6116–01–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 Business 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 September 22, 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: Annual Business Survey.

OMB Control Number: 0607–1004.

Form Number(s): ABS–1.

Type of Request: Regular submission, Request for a Revision of a Currently Approved Collection.

Number of Respondents: 338,000.

Average Hours per Response: 58 minutes.

Burden Hours: 325,200.

Needs and Uses: In an effort to improve the measurement of business dynamics in the United States, the Census Bureau is conducting the 2024 Annual Business Survey (ABS), covering reference year 2023. The ABS combines Census Bureau firm-level collections to reduce respondent burden, increase data quality, reduce operational costs, and operate more efficiently. The ABS provides information on selected economic and demographic characteristics for businesses and business owners by sex, ethnicity, race, and veteran status. Further, the survey measures research and development for microbusinesses, new business topics such as innovation and technology, as well as other business characteristics. The 2024 ABS is co-sponsored by the National Center for Science and Engineering Statistics (NCSES) within the National Science Foundation (NSF) and conducted by the Census Bureau.

The ABS includes all nonfarm employer businesses filing Internal Revenue Service (IRS) tax forms as individual proprietorships, partnerships, or any other type of corporation, with receipts of $1,000 or more. While the 2023 ABS sampled approximately 850,000 employer businesses to produce detailed statistics by owner demographics, the 2024 ABS sample is reduced to approximately 330,000 employer businesses. Starting with survey year 2024 (reference year 2023), the sample is reduced to approximately 330,000 employer businesses annually (survey years 2024–2027) to reduce the burden on the respondents. The reduced sample size will yield summary-level estimates for women-owned, minority-owned, and veteran-owned businesses at the 4-digit

NAICS, U.S., state metropolitan statistical area (MSA), and county levels. The Census Bureau uses administrative data to estimate the probability that a firm is minority- or women-owned. Each firm is then placed in one of eight frames for sampling. The sampling frames are: American Indian or Alaskan Native, Asian, Black or African American, Hispanic, Native Hawaiian and Other Pacific Islander, Non-Hispanic White Men, Publicly Owned, and Women. The sample is stratified by state, industry, and frame. The Census Bureau selects some companies with certainty based on volume of sales, payroll, and number of paid employees or NAICS. All certainty cases are sure to be selected and represent only themselves.

The 2024 ABS (reference year 2023) will also sample 8,000 nonprofit organizations to collect their research activities. Historically, nonprofit organizations were in scope to the ABS, however, they were not surveyed before the 2021 ABS because the survey does not expect nonprofit organizations to be classifiable by sex, ethnicity, race, or veteran status. To include the nonprofit organizations, the total ABS sample size is approximately 338,000 (330,000 employer businesses + 8,000 nonprofit organizations) for the 2024 survey. Of note, nonprofit organizations will only see questions relating to research activities and will not be asked any questions relating to owner demographics.

The ABS is designed to allow for incorporating new content each survey year based on topics of relevance. Each year, new questions will be submitted to the Office of Management and Budget (OMB) for approval.

Employer businesses will be asked questions about the sex, ethnicity, race, and veteran status for up to four persons owning the majority of rights, equity, or interest in the business. Additionally, businesses will be asked a question on gender identify as part of the owner section of the questionnaire. Organizations sampled as nonprofits and respondents with 1–9 employees will be asked about research and development (R&D) activities, R&D costs, and R&D capital expenditures. Further, employer businesses sampled will be asked about the following topics: Goods, Services, and Business Processes; Technology Transfer and Intellectual Property; Domestic and Foreign Transactions; and Management Practices. The 2024 ABS initial mailing is scheduled for July 2024.

Statistics from the ABS will be used by government program officials, industry organization leaders, economic and social analysts, business entrepreneurs, and domestic and foreign researchers in academia, business, and government. Estimates produced on owner demographic data may be used to assess business assistance needs, allocate available program resources, and create a framework for planning, directing, and assessing programs that promote the activities of disadvantaged groups; to assess minority-owned businesses by industry and area and to educate industry associations, corporations, and government entities; to analyze business operations in comparison to similar firms, compute market share, and assess business growth and future prospects. Estimates produced on R&D and innovation may be used to compare R&D costs across industries, determine where R&D activity is conducted geographically, and identify the types of businesses with R&D; to contribute to the Bureau of Economic Analysis (BEA) system of national accounts; to increase investments in research and development, strengthen education, and encourage entrepreneurship; and to compare business innovation in the United States to other countries, including those in the European Union. Results of the research activities data collected from nonprofit organizations will be used to report updated, valid, and reliable estimates of U.S. nonprofit R&D in National Patterns of R&D Resources and BEA's system of national accounts.

The data collected by ABS will also be incorporated into the National Science Board's biennial report, Science and Engineering Indicators (SEI). The R&D data from the nonprofit module will be reported in the Organization for Economic Cooperation and Development (OECD) periodic publications and for international comparisons of R&D efforts. NCSES also anticipates professional associations will use data from the nonprofit module. Likely users in this category include, but are not limited to, the Science Philanthropy Alliance, the Association of Independent Research Institutes, and the Health Research Alliance.

Additional examples of data use include:

- The Small Business Administration (SBA) and the Minority Business Development Agency (MBDA) to assess business assistance needs and allocate available program resources.
- Local government commissions on small and disadvantaged businesses to establish and evaluate contract procurement practices.
- Federal, state, and local government agencies as a framework for planning, directing and assessing programs that promote the activities of disadvantaged groups.
- The National Women's Business Council to assess the state of women's business ownership for policymakers, researchers, and the public at large.
- Consultants and researchers to analyze long-term economic and demographic shifts, and differences in ownership and performance among geographic areas.
- Individual business owners to analyze their operations in comparison to similar firms, compute their market share, and assess their growth and future prospects.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 8(b), 131, and 182; Title 42, United States Code, Section 1861–76 (National Science Foundation Act of 1950, as amended); and Section 505 within the America COMPETES Reauthorization Act of 2010 authorize this collection. Sections 224 and 225 of Title 13, United States Code, require a response from sampled firms.

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 0607–1004.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–01127 Filed 1–19–24; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Direct Investment Surveys: BE–605, Quarterly Survey of Foreign Direct Investment in the United States—Transactions of U.S. Affiliate With Foreign Parent

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 8, 2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: Bureau of Economic Analysis (BEA), Commerce.

Title: Quarterly Survey of Foreign Direct Investment in the United States.

OMB Control Number: 0608–0009.

Form Number: BE–605.

Type of Request: Regular submission, reinstatement without change.

Number of Respondents: 6,500 per quarter, 26,000 annually.

Average Hours per Response: 1 hour is the average but may vary considerably among respondents because of differences in company structure and complexity.

Burden Hours: 26,000.

Needs and Uses: The Quarterly Survey of Foreign Direct Investment in the United States (BE–605) obtains quarterly data on transactions and positions between foreign-owned U.S. business enterprises and their ''affiliated foreign groups'' (*i.e.,* their foreign parents and foreign affiliates of their foreign parents). The survey is a sample survey that covers all U.S. affiliates, except for certain private funds, above a size-exemption level. The sample data are used to derive universe estimates of direct investment transactions, positions, and income in non-benchmark years from similar data reported in the BE–12, Benchmark Survey of Foreign Direct Investment in the United States, which is conducted every five years. The data collected through the BE–605 survey are essential for the preparation of the U.S. international transactions accounts, the national income and product accounts, the input-output accounts, and the net international investment position of the United States. The data are needed to measure the size and economic significance of foreign direct investment in the United States, measure changes in such investment, and assess its impact on the U.S. economy.

Affected Public: Businesses or other for-profit organizations.

Frequency: Quarterly.

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 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 0608–0009.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–01055 Filed 1–19–24; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–840]

Certain Frozen Warmwater Shrimp From India: Preliminary Results of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that Elque Ventures Private Limited (EVPL) is the successor-in-interest to Elque & Co. in the context of the antidumping duty order on certain frozen warmwater shrimp (shrimp) from India.

DATES: Applicable January 22, 2024.

FOR FURTHER INFORMATION CONTACT: Terre Keaton Stefanova or Christopher Viers, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1280 or (202) 482–0519, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2005, the Commerce published the order in the **Federal Register**.[1] In the 2017–2018 administrative review of the *Order,* Commerce determined that the Elque Group (*i.e.,* Elque & Co., Calcutta Seafoods Pvt. Ltd. (Calcutta Seafoods), and Bay Seafood Pvt. Ltd. (Bay Seafood)) should be treated as a single entity for purposes of antidumping duties.[2] In the 2021–2022 administrative review, Commerce assigned the Elque Group a cash deposit rate of 3.88 percent.[3] On July 21, 2023, in response to a request by EVPL,[4] Commerce published a notice of initiation of changed circumstances review (CCR) to consider whether EVPL is the successor-in-interest to Elque & Co.[5]

On September 13, 2023, we issued a supplemental questionnaire to EVPL, to which we received a response on September 25, 2023.[6] EVPL stated in its response that there were no material changes in the ownership and management structure, production facilities, and supplier and customer base of Calcutta Seafoods and Bay Seafood (*i.e.,* the other companies comprising the Elque Group) as a result

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India,* 70 FR 5147 (February 1, 2005) (*Order*).

[2] *See Certain Frozen Warmwater Shrimp from India: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 16843 (April 23, 2019), and accompanying Preliminary Decision Memorandum at 3 (*Shrimp from India AR 2017–2018 Prelim*), unchanged in *Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 57847 (October 29, 2019).

[3] *See Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review; 2021–2022,* 88 FR 60431 (September 1, 2023) (*Shrimp from India AR 2021–2022*).

[4] *See* EVPL's Letter, ''Request for an Expedited Changed Circumstances Review,'' dated June 6, 2023 (EVPL CCR Request).

[5] *See Certain Frozen Warmwater Shrimp from India: Notice of Initiation of Antidumping Duty Changed Circumstances Review,* 88 FR 47105 (July 21, 2023).

[6] *See* EVPL's Letter, ''Response to Changed Circumstances Review Supplemental Questionnaire,'' dated September 25, 2023 (SQR).

of Elque & Co.'s conversion to EVPL.[7] No interested party filed comments on EVPL's CCR request.

Scope of the Order

The scope of this *Order* includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[8] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this *Order,* regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this *Order.* In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this *Order.*

Excluded from the scope are: (1) breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); (7) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) that is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and ten percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this *Order* are currently classified under the following HTSUS subheadings: 0306.17.00.04, 0306.17.00.05, 0306.17.00.07, 0306.17.00.08, 0306.17.00.10, 0306.17.00.11, 0306.17.00.13, 0306.17.00.14, 0306.17.00.16, 0306.17.00.17, 0306.17.00.19, 0306.17.00.20, 0306.17.00.22, 0306.17.00.23, 0306.17.00.25, 0306.17.00.26, 0306.17.00.28, 0306.17.00.29, 0306.17.00.41, 0306.17.00.42, 1605.21.10.30, and 1605.29.10.10. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this *Order* is dispositive.[9]

Preliminary Results

In this CCR, pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), Commerce conducted a successor-in-interest analysis. In making a successor-in-interest determination, Commerce examines several factors, including, but not limited to, changes in the following: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base.[10] While no single factor or combination of factors will necessarily provide a dispositive indication of a successor-in-interest relationship, generally, Commerce will consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor.[11] Thus, if the record evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, Commerce may assign the new company the cash deposit rate of its predecessor.[12]

In accordance with 19 CFR 351.216, we preliminarily determine that EVPL is the successor-in-interest to Elque & Co, based on the analysis of the information EVPL provided in its CCR request regarding the factors listed above.

Management

EVPL was incorporated in 2019.[13] In April 2022, Elque & Co. and EVPL signed a takeover agreement to transfer all of Elque & Co.'s assets and liabilities to EVPL.[14] After the takeover, EVPL demonstrated that the managers of Elque & Co. continued to be the directors of EVPL and that there was no change in the company's ownership.[15]

[7] *Id.*

[8] ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

[9] On April 26, 2011, Commerce amended the *Order* to include dusted shrimp, pursuant to the U.S. Court of International Trade (CIT) decision in *Ad Hoc Shrimp Trade Action Committee* v. *United States,* 703 F. Supp. 2d 1330 (CIT 2010) and the U.S. International Trade Commission determination, which found the domestic like product to include dusted shrimp. *See Certain Frozen Warmwater Shrimp from Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision,* 76 FR 23277 (April 26, 2011); *see also Ad Hoc Shrimp Trade Action Committee* v. *United States,* 703 F. Supp. 2d 1330 (CIT 2010); and *Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and France* (Investigation Nos. 731–TA–1063, 1064, 1066–1068) (Review), USITC Publication 4221, March 2011.

[10] *See, e.g., Certain Frozen Warmwater Shrimp from India: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review,* 83 FR 37784 (August 2, 2018) (*Shrimp from India 2018 CCR Prelim*), unchanged in *Certain Frozen Warmwater Shrimp from India: Notice of Final Results of Antidumping Duty Changed Circumstances Review,* 83 FR 49909 (October 3, 2018) (*Shrimp from India 2018 CCR Final*).

[11] *See, e.g., Shrimp from India 2018 CCR Prelim,* 83 FR at 37784, unchanged in *Shrimp from India 2018 CCR Final,* 83 FR at 49909.

[12] *See, e.g., Shrimp from India 2018 CCR Prelim,* 83 FR at 37784, unchanged in *Shrimp from India 2018 CCR Final,* 83 FR at 49909; *see also Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber from Japan,* 67 FR 58, 59 (January 2, 2002); *Ball Bearings and Parts Thereof from France: Final Results of Changed-Circumstances Review,* 75 FR 34688, 34689 (June 18, 2010); *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Preliminary Results of Antidumping Duty Changed Circumstances Review,* 63 FR 14679 (March 26, 1998), unchanged in *Circular Welded Non-Alloy Steel Pipe from Korea: Final Results of Antidumping Duty Changed Circumstances Review,* 63 FR 20572 (April 27, 1998), in which Commerce found that a company which only changed its name and did not change its operations is a successor-in-interest to the company before it changed its name.

[13] *See* EVPL's CCR Request at 3.

[14] *Id.* at 3 and Exhibit 1.

[15] *See* Memorandum, ''Business Proprietary Information Accompanying the Preliminary

Production Facilities

EVPL stated that it operates all of the same production facilities that Elque & Co. used to produce shrimp.[16] According to EVPL, the company's factories are in the same locations they were under Elque & Co. before the company restructured.[17]

Supplier Relationships

EVPL stated that there were no material changes in the raw material suppliers of Elque & Co. as a result of the restructuring. EVPL provided a list of Elque & Co.'s raw material suppliers during the three months prior to the takeover, as compared to EVPL's suppliers for the three months after the takeover.[18] This information demonstrates that EVPL continued to use certain of the same suppliers as Elque & Co.[19]

Customer Base

EVPL stated that there were no material changes in the customer base of Elque & Co. as a result of the restructuring. EVPL provided a list of Elque & Co.'s shrimp customers during the three months prior to the takeover, as compared to EVPL's customers during the three months after the takeover.[20] This information demonstrates that EVPL continued to sell to certain of the same customers as Elque & Co.[21]

Thus, record evidence, as submitted by EVPL, indicates that EVPL operates as essentially the same business entity as Elque & Co. with respect to the subject merchandise.[22] Moreover, Commerce previously determined that it was appropriate to treat Calcutta Seafoods Pvt. Ltd. (Calcutta Seafoods), Bay Seafood Pvt. Ltd. (Bay Seafood), and Elque & Co. as a single entity (the Elque Group).[23] Because EVPL demonstrated that there were no material changes in the ownership and management structure, production facilities, and supplier and customer base of Calcutta Seafoods and Bay Seafood (the other companies in the Elque Group), we preliminarily find that the Elque Group now consists of EVPL, Calcutta Seafoods, and Bay Seafood.

Public Comment

Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[24] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[25] All comments are to be filed electronically using Enforcement and Compliance's Antidumping and CVD Centralized Electronic Service System (ACCESS). An electronically filed document must be received successfully in its entirety by ACCESS by 5 p.m. Eastern Time on the day it is due.[26]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[27] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this CCR. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[28]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.

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 the review was initiated, or within 45 days if all parties agree to our preliminary finding. If we continue to find that EVPL is the successor-in-interest to Elque & Co. in this CCR, we will assign EVPL the cash deposit rate currently assigned to Elque & Co. as part of the Elque Group (*i.e.,* 3.88 percent).[29]

Notification to Interested Parties

We are issuing this notice in accordance with sections 751(b)(1) and 777(i) of the Act and 19 CFR 351.216(b) and 351.221(b)(1).

Dated: January 12, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–01087 Filed 1–19–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–4–2024]

Foreign-Trade Zone 96—Eagle Pass, Texas; Application for Reorganization and Expansion Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the City of Eagle Pass, grantee of FTZ 96, requesting authority to reorganize and expand the zone under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the FTZ Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on January 16, 2024.

FTZ 96 was approved by the FTZ Board on November 22, 1983 (Board

Results,'' dated concurrently with this notice (BPI Memo).

[16] *See* EVPL's CCR Request at 6 and Exhibit 3.

[17] *Id.* at 6 and Exhibit 4.

[18] *Id.* at 8 and Exhibit 7.

[19] *See* BPI Memo for the business proprietary details of our analysis.

[20] *See* EVPL's CCR Request at Exhibit 7.

[21] *See* BPI Memo for the business proprietary details of our analysis.

[22] *See* EVPL's CCR Request and SQR.

[23] *See Shrimp from India AR 2017–2018 Prelim.*

[24] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Final Service Rule*).

[25] *See* 19 351.309(c)(2) and (d)(2).

[26] *See* 19 CFR 351.303(b).

[27] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[28] *See APO and Final Service Rule.*

[29] *See Shrimp from India AR 2021–2022.*

Order 237, 48 FR 53738, November 29, 1983).

The current zone includes the following sites: *Site 1* (188 acres)—Eagle Pass Industrial Park, Industrial Boulevard and Brown Street, Eagle Pass; *Site 2* (17 acres)—City's Mini Industrial Park, Industrial Boulevard and Adams Street, Eagle Pass; *Site 3* (1,100 acres)—Maverick County Airport, U.S, Highway 277, Eagle Pass; and, *Site 4* (55 acres)—located on State Highway 1588 near Highway 277, Eagle Pass.

The grantee's proposed service area under the ASF would be Maverick County, Texas, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The application indicates that the proposed service area is within and adjacent to the Eagle Pass Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize and expand its existing zone as follows: (1) remove existing Sites 1, 2 and 4 from the zone; (2) modify Site 3 by removing and adding acreage (new site total—562.71 acres); and, (3) modified Site 3 would become a ''magnet'' site. The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that modified Site 3 be so exempted.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov*. The closing period for their receipt is March 22, 2024. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 8, 2024.

A copy of the application will be available for public inspection in the ''Online FTZ Information Section'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.* For further information, contact Camille Evans at *Camille.Evans@trade.gov.*

Dated: January 16, 2024.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2024–01078 Filed 1–19–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Commercial Research and Development Facilities (R&D) Information Collection Request (ICR)

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 24, 2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Institute of Standards and Technology (NIST), Commerce.

Title: Commercial Research and Development Facilities (R&D) Concept Plan and Full Application Information Collection Request (ICR).

OMB Control Number 0693–XXXX.

Form Number(s): None.

Type of Request: Regular.

Number of Respondents: Concept Paper: 100 (1 time). Full Application: 25 (1 time).

Average Hours per Response: Concept Paper: 42 hours. Full Application: 42 hours.

Burden Hours: Concept Paper: 4,200 hours. Full Application: 1,050 hours.

Needs and Uses: The CHIPS Program Office (CPO) intends to release a notice of funding opportunity (NOFO) to solicit applications for CHIPS Incentives that will support investments in the construction, expansion, or modernization of facilities for the research and development of semiconductors. A potential applicant must submit a concept plan to be officially considered for a CHIPS Incentive Award. Concept plans will be reviewed CPO and a subset of applicants whose concept plan scored sufficiently will then be invited to submit full applications. Full applications will be reviewed and evaluated to make award and funding decisions that align with key programmatic objectives.

Information collected as part of the application process may include but is not limited to project descriptions, project timelines, narrative justifications for incentives, applicant financial information, and relevant project environmental and workforce information.

Affected Public: Business or other for-profit organizations.

Frequency: Once.

Respondent's Obligation: Mandatory to be eligible for CHIPS Act funding.

Legal Authority: CHIPS Act of 2022 (Division A of Pub. L. 117–167) (the Act).

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0693–XXXX.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–01069 Filed 1–19–24; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD667]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public meetings of the Council.

DATES: The meetings will be held Tuesday, February 6 through Wednesday, February 7, 2024. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: This meeting will be an in-person meeting with a virtual option.

Council members, other meeting participants, and members of the public will have the option to participate in person at The Westin Arlington Gateway or virtually via Webex webinar. Webinar connection instructions and briefing materials will be available at: *https://www.mafmc.org/briefing/february-2024.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State St., 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. The Council's website, *www.mafmc.org,* also has details on the meeting location, proposed agenda, webinar listen-in access, and briefing materials.

SUPPLEMENTARY INFORMATION: The following items are on the agenda, although agenda items may be addressed out of order (changes will be noted on the Council's website when possible.)

Tuesday, February 6, 2024

Atlantic Surfclam and Ocean Quahog Species Separation Requirements Amendment

Review and approve Public Hearing Document.

LUNCH

Business Session

Committee Reports (SSC); Executive Director's Report; Organization Reports; and Liaison Reports.

Other Business and General Public Comment

Briefing Book Tutorial

Legal Review, Financial Disclosure and Recusal Training—John Almeida, NOAA Fisheries

Wednesday, February 7, 2024

Offshore Wind Updates

Updates from the Bureau of Ocean Energy Management.

Updates from the state working group on a fisheries compensation fund administrator.

Updates from offshore wind project developers: Ørsted, Vineyard Wind, Kitty Hawk Wind, Community Offshore Wind.

Black Sea Bass Assessment Overview—Larry Alade, Kiersten Curti, NEFSC

Overview of recently completed Research Track stock assessment.

LUNCH

Sturgeon Framework

Review progress on joint Mid-Atlantic/New England Council action to reduce Atlantic Sturgeon interaction in the monkfish/dogfish gillnet fisheries.

Approve final packages of alternatives.

Northeast Fisheries Science Center (NEFSC) White Paper ''Draft Proposed Plan for a Novel Industry Based Multispecies Bottom Trawl Survey on the Northeast U.S. Continental Shelf''

—Dr. Kathryn Ford, NEFSC

Overview of the Industry-based survey white paper.

Consider next steps.

Awards Presentation

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions 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).

Special Accommodations

These meetings are 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: January 17, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–01089 Filed 1–19–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD670]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of hybrid conference meetings of the North Pacific Fishery Management Council and its advisory committees.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will meet in February in Seattle, WA.

DATES: The meetings will be held February 5, 2024 through February 12, 2024. The Council's Scientific and Statistical Committee (SSC) will begin at 8 a.m. in the Courtyard Ballroom on Monday, February 5, 2024, and continue through Wednesday, February 7, 2024. The Council's Advisory Panel (AP) will begin at 10:30 a.m. in the North/West room on Tuesday, February 6, 2024, and continue through Friday, February 9, 2024. The Council will begin at 8 a.m. in the Courtyard Ballroom on Thursday, February 8, 2024, and continue through Monday, February 12, 2024. All times listed are Pacific Time.

ADDRESSES: The meetings will be a hybrid conference.

Meeting address: The in-person component of the meeting will be held at the Renaissance Hotel, 515 Madison St., Seattle, WA 98104, or join the meeting online through the links at *https://www.npfmc.org/upcoming-council-meetings.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave., Suite 400, Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting via web conference are given under Connection Information, below.

FOR FURTHER INFORMATION CONTACT: Diana Evans, Council staff; email: *diana.evans@noaa.gov;* telephone: (907) 271–2809. For technical support, please contact our Council administrative staff, email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Monday, February 5, 2024 Through Wednesday, February 7, 2024

The SSC agenda will include the following issues:

(1) NSRKC (Norton Sound Red King Crab) ABC (acceptable biological catch)/OFL (overfishing limit)—Set Specifications, Crab Plan Team Report
(2) BBRKC (Bristol Bay Red King Crab) Closure Areas—Initial Review
(3) Cook Inlet Salmon—Status Determination Criteria, harvest specifications
(4) AFA (American Fisheries Act) Program Review—review workplan
(5) Case Studies for the 8th National Regional Fishery Management Councils' Scientific Coordination Subcommittee (SCS8) workshop—discuss candidates

(6) Small Sablefish release—identify sablefish DMR (discard mortality rate) for analysis
(7) Research Priorities—Plan Teams reports

The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/3030* prior to the meeting, along with meeting materials.

In addition to providing ongoing scientific advice for fishery management decisions, the SSC functions as the Council's primary peer review panel for scientific information, as described by the Magnuson-Stevens Act section 302(g)(1)(e), and the National Standard 2 guidelines (78 FR 43066). The peer-review process is also deemed to satisfy the requirements of the Information Quality Act, including the OMB Peer Review Bulletin guidelines.

Tuesday, February 6, 2024 Through Friday, February 9, 2024

The Advisory Panel agenda will include the following issues:

(1) NSRKC ABC/OFL—Set Specifications, Crab Plan Team Report
(2) BBRKC Closure Areas—Initial Review
(3) Pelagic Trawl Gear Definition Changes—review NMFS report
(4) Cook Inlet Salmon—Status Determination Criteria, harvest specifications
(5) GOA (Gulf of Alaska) Tanner Crab protections—review discussion paper
(6) Programmatic Evaluation of management policies—Council direction and workshop planning
(7) AFA Program Review—review workplan
(8) Staff Tasking

Thursday, February 8, 2024 Through Monday, February 12, 2024

The Council agenda will include the following issues. The Council may take appropriate action on any of the issues identified.

(1) B Reports (Executive Director including research presentation on effects of fishing on benthic habitat, NMFS Management including annual cost recovery updates and E-Logbooks Exempted Fishing Permit, NOAA GC, AFSC, ADF&G, USCG, USFWS, IPHC report, Advisory Panel, SSC report)
(2) NSRKC ABC/OFL—Set Specifications, Crab Plan Team Report
(3) BBRKC Closure Areas—Initial Review
(4) Cook Inlet Salmon—Status Determination Criteria, harvest specifications
(5) Pelagic Trawl Gear Definition Changes—review NMFS report
(6) GOA Tanner Crab protections—review discussion paper
(7) Programmatic Evaluation of management policies—Council direction and workshop planning
(8) AFA Program Review—review workplan
(9) Staff Tasking

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at: *https://www.npfmc.org/upcoming-council-meetings.* For technical support, please contact our administrative staff, email: *npfmc.admin@noaa.gov.*

If you are attending the meeting in-person, please refer to the COVID avoidance protocols on our website, *https://www.npfmc.org/upcoming-council-meetings/.*

Public Comment

Public comment letters will be accepted and should be submitted electronically through the links at *https://www.npfmc.org/upcoming-council-meetings.* The Council strongly encourages written public comment for this meeting, to avoid any potential for technical difficulties to compromise oral testimony. The written comment period is open from January 12, 2024, to February 2, 2024, and closes at 12 p.m. Alaska Time on Friday, February 2, 2024.

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

Dated: January 16, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–01067 Filed 1–19–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Commercial Operator's Annual Report (COAR)

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Information Collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before March 22, 2024.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–0428 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Gabrielle Aberle, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668, *gabrielle.aberle@noaa.gov* or 323–372–0062.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS), Alaska Regional Office, is requesting renewal of the currently approved information collection for the Commercial Operator's Annual Report (COAR).

The COAR is a State of Alaska report that is required to be completed and submitted by direct marketers, catcher processors, catcher exporters, buyer exporters, shore-based processors, and floating processor permit holders pursuant to Alaska Administrative Code (5 AAC 39.130) and Federal regulations at 50 CFR 679. Under 50 CFR 679.5(p), NMFS requires motherships and catcher processors that are issued a Federal fisheries permit to annually complete and submit the appropriate sections of the COAR.

The COAR is used to gather statewide fish and shellfish information describing buying (ex-vessel) and production (wholesale or retail) activities. The information collected in the COAR is used to determine the value of Alaska's fisheries resources and products. NMFS uses the COAR database in annual Federal publications on the value of U.S. commercial fisheries, in the annual NMFS Stock

Assessment and Fishery Evaluation reports for the groundfish fisheries of the Bering Sea and Aleutian Islands and the Gulf of Alaska, and in periodic reports that describe the fisheries and that serve as reference documents to management agencies, the industry, and others.

The mothership and catcher processor data, when added to the COAR information collected from shoreside processors and stationary floating processors required under State of Alaska requirements, yield a complete data base of equivalent annual product value information for all respective processing sectors. The information also provides a consistent time series according to which groundfish resources may be managed more efficiently. Use of the information generated by the COAR is coordinated between NMFS and the Alaska Department of Fish and Game (ADF&G).

The COAR must be submitted by April 1 to the ADF&G for the previous year's activity for all operations that are required to submit a COAR. NMFS requires the owner of a mothership or catcher processor to annually complete and submit the appropriate forms of the COAR, whether the processor operated that year or not. If no receipt or production took place for that year, the owner submits only the COAR certification page.

The COAR requires submission of information on seafood purchasing, production, and both ex-vessel and wholesale values of seafood products. The buying information is reported by species, harvest area, area of purchase, condition of fisheries resources at the time of purchase, type of gear used in the harvest, pounds purchased, and ex-vessel value. The ex-vessel value includes any post-season adjustments or bonuses paid after the fish was purchased. The production information is reported by species, area of processing, process type (*e.g.,* frozen, canned, smoked), product type (*e.g.,* fillets, surimi, sections), net weight of the processed product, and the first wholesale value.

II. Method of Collection

The COAR may be submitted electronically through eLandings, the Interagency Electronic Reporting System (*elandings.alaska.gov*). The COAR is also available in fillable PDF, Microsoft Word, and Microsoft Excel formats on the ADF&G Commercial Fish Reporting web page at *https://www.adfg.alaska.gov/index.cfm?adfg=fishlicense.coar* and may be emailed or printed and mailed to the ADF&G.

III. Data

OMB Control Number: 0648–0428.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals or households; Business or other for-profit organizations.

Estimated Number of Respondents: 72.

Estimated Time per Response: Commercial Operator's Annual Report: 8 hours.

Estimated Total Annual Burden Hours: 576 hours.

Estimated Total Annual Cost to Public: $360 in recordkeeping and reporting costs.

Respondent's Obligation: Mandatory.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–01090 Filed 1–19–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Ocean Research Advisory Panel (ORAP)

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Ocean Research Advisory Panel (ORAP). The members will discuss issues outlined in the section on Matters to be considered.

DATES: The meeting is scheduled for February 26, 2024 from 1 p.m. to 5 p.m. Eastern Standard Time (EST). This time and the agenda topics described below are subject to change.

For the latest agenda please refer to the ORAP website: *https://www.noaa.gov/ocean-research-advisory-panel/orap-public-meetings.*

ADDRESSES: The February 26, 2024 meeting will be virtual. The link for the webinar registration will be posted, when available, on the ORAP website: *https://www.noaa.gov/ocean-research-advisory-panel/orap-public-meetings.*

FOR FURTHER INFORMATION CONTACT: Viviane Silva, ORAP Designated Federal Officer (DFO), SSMC3, Room 11320, 1315 East-West Hwy., Silver Spring, MD 20910; Phone Number: 240–624–0656; Email: *DFO.orap@noaa.gov;* or visit the ORAP website at *https://www.noaa.gov/ocean-research-advisory-panel/orap-public-meetings.*

SUPPLEMENTARY INFORMATION: The Ocean Research Advisory Panel (ORAP) advises the Ocean Policy Committee (OPC) and provides independent recommendations to the Federal Government on matters of ocean policy.

Congress directed the establishment of the ORAP in Section 1055(c) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283), 10 U.S.C. 8933.

ORAP's responsibilities are (1) to advise the OPC on policies and procedures to implement the National Oceanographic Partnership Program; (2) to advise the OPC on matters relating to national oceanographic science, engineering, facilities, or resource requirements; (3) to advise the OPC on improving diversity, equity, and inclusion in the ocean sciences and related fields; (4) to advise the OPC on national ocean research priorities; and (5) any additional responsibilities that the OPC considers appropriate.

Status: The February 26, 2024 meeting will be open to public participation with a 15-minute public comment period at 3:15 p.m. EST. The ORAP expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three minutes. Written comments for the February 26, 2024 meeting should be received by February 16, 2024 by the ORAP DFO (*DFO.orap@noaa.gov*) to provide sufficient time for ORAP review. Written comments received by the ORAP DFO after this date will be distributed to the ORAP, but may not be reviewed prior to the meeting date.

Special Accommodations: These meetings are physically accessible to people with disabilities. Requests for special accommodations may be directed to the ORAP DFO no later than 12 p.m. EST on February 16, 2024.

Matters to be Considered: During the ORAP meeting on Dec 13–14, 2023, the Ocean Policy Committee (OPC) requested that the ORAP advise on areas of opportunity for partnership (such as through the National Oceanic Partnership Program) on the topic of emerging technology (which could include Artificial Intelligence/Machine Learning, eDNA, and similar technology) with ocean industry and other sectors over the next 5–10 years. The OPC also requested that ORAP self-select another topic to address. The ORAP members agreed that the topic of accessible, inter-operable, interdisciplinary, and trusted ocean data to meet research and user needs is critical and deserves ORAP immediate attention. At this virtual meeting on February 26, 2024, ORAP members will be discussing the approach to address those two OPC taskings based on an initial review of each topic conducted by ORAP members. Meeting materials, including work products, will be made available on the ORAP website: *https://www.noaa.gov/ocean-research-advisory-panel/orap-public-meetings.*

Dated: December 19, 2023.

David Holst,

Director Chief Financial Officer/CAO, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2024–01062 Filed 1–19–24; 8:45 am]

BILLING CODE 3510–KD–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2024–0003]

Petition Requesting Rulemaking To Mandate Testing and Labeling Regarding Slip Resistance of Flooring, Floor Coatings and Treatments, Floor Cleaning Agents, and Footwear

AGENCY: Consumer Product Safety Commission.

ACTION: Request for comments on petition for rulemaking.

SUMMARY: The Consumer Product Safety Commission (CPSC or Commission) has received a petition requesting that the Commission initiate rulemaking to mandate testing and labeling regarding the slip resistance (traction) of commercial and residential grade floor coverings, floor coatings and treatments, residential and commercial floor cleaning agents, and consumer footwear. The Commission invites written comments concerning the petition.

DATES: Submit comments by April 22, 2024.

ADDRESSES: Submit comments, identified by Docket No. CPSC–2024–0003, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments. CPSC typically does not accept comments submitted by email, except as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal.

Mail/Hand Delivery/Courier Written Submissions: Submit comments by mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: *cpsc-os@cpsc.gov.*

Instructions: All submissions must include the agency name and docket number for this notice. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: *https://www.regulations.gov.* Do not submit electronically: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier written submissions.

Docket: To read background documents or comments regarding this petition, go to: *https://www.regulations.gov,* insert docket number CPSC–2024–0003 in the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Alberta E. Mills, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7479; email: *amills@cpsc.gov.*

SUPPLEMENTARY INFORMATION: On April 11, 2023, the National Floor Safety Institute (NFSI; petitioner) requested that the Commission initiate rulemaking to mandate testing and labeling regarding the slip resistance (traction) of commercial and residential grade floor coverings, floor coatings and treatments, residential and commercial floor cleaning agents, and consumer footwear. The petitioner requests that the Commission require that:

- manufacturers of commercial and residential grade floor coverings and coatings test the slip resistance of their products in accordance with the most current version of NFSI's standard B101.3, *Test Method for Measuring the Wet Dynamic Coefficient of Friction (DCOF) of Hard Surface Walkways,* and label their products in accordance with the most current version of NFSI standard B101.5, *Standard Guide for Uniform Labeling Method for Identifying the Wet Dynamic Coefficient of Friction (Traction) of Floor Coverings, Floor Coatings, Treatments, Commercial and Residential Floor Chemical Agents, and Consumer Footwear* (B101.5);
- manufacturers of commercial and residential grade chemical floor cleaners and treatments test the slip resistance of their products in accordance with the most current version of NFSI standard B101.2, *Test Method for Determining the Impact on Wet Coefficients of Friction of Various Chemical or Physical Walkway Surface Cleaners and Treatments on Common Hard-Surface Flooring Materials,* and label their products in accordance with the most current version of NFSI standard B101.5; and
- manufacturers of footwear test the slip resistance of their products' outsoles in accordance with the most current version of NFSI standard B101.7, *Standard Test Method for Lab Measurement of Footwear Heel Outsole Material Coefficient of Friction on Liquid-Contaminated Floor Surfaces,* and label their products in accordance

with the most current version of NFSI standard B101.5.

The NFSI standards that the petitioner requests that the Commission mandate provide test methods for assessing the coefficient of friction (COF) of the listed products along with graphics to label the products as having low, moderate, or high traction, based on the COF test results.[1] As such, the petitioner's request is not that any level of slip resistance be mandated, but rather that the listed products be tested for their COF and then labeled with the resulting information. The petitioner asserts that requiring manufacturers to provide this slip-resistance information to consumers at the point of sale would enable consumers to make informed buying decisions, and thereby address the risk of injury associated with slips and falls, primarily involving the elderly.

The petitioner previously submitted similar requests for rulemaking. In 2015, the petitioner requested that the Commission initiate a rulemaking to require manufacturers of floor coverings to test and label their products in accordance with NFSI B101.5–2014, *Standard Guide for Uniform Labeling Method for Identifying the Wet Static and Wet Dynamic Coefficient of Friction (Traction) of Floor Coverings, Floor Coverings with Coatings, and Treated Floor Coverings.* That request was docketed as petition CP 16–1.[2] The Commission denied that petition because there was insufficient information to demonstrate that the requested rule would assist consumers in assessing the comparative safety of floor coverings or reduce slip and fall incidents. Specifically, the Commission concluded that the petition did not establish an association between slip and fall incidents and particular types of flooring; there was a lack of consistency and accuracy in test methods used; there was insufficient information in the petition to indicate that a high COF decreased the risk of slips and falls; and a labeling requirement would be insufficient to address the hazard because a COF is likely only one of several factors involved in slips and falls.[3]

In 2018, the petitioner submitted a similar request that the Commission initiate rulemaking to require manufacturers of floor coverings and coatings to test their products in accordance with NFSI B101.3–2012, *Test Method for Measuring Wet DCOF of Common Hard-Surface Floor Materials (Including Action and Limit Thresholds for the Suitable Assessment of the Measured Values),* label their products according to NFSI B101.5–2014, and require flooring retailers to provide point-of-sale information regarding the label to assist with purchasing decisions. That request was docketed as petition CP 18–2.[4] The Commission denied that petition because the request had not adequately addressed the concerns cited in the previous denial.[5]

The Commission seeks comments concerning the present petition.

The major factors the Commission considers in deciding whether to grant or deny a petition (in pertinent part) include the following:

- whether the product presents an unreasonable risk of injury;
- whether a rule is reasonably necessary to eliminate or reduce the risk of injury; and
- whether failure of the Commission to initiate the rulemaking proceeding requested would unreasonably expose the petitioner or other consumers to the risk of injury which the petitioner alleges is presented by the product.

16 CFR 1051.9(a). In considering these factors, the Commission will treat as an important component of each one the relative priority of the risk of injury associated with the product about which the petition has been filed and the Commission's resources available for rulemaking activities with respect to that risk of injury. 16 CFR 1051.9(b); *see also* 16 CFR 1009.8 (stating criteria upon which the Commission priorities are based).

The petition is available at: *http://www.regulations.gov,* under Docket No. CPSC–2024–0003, Supporting and Related Materials. Alternatively, interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7479.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2024–01081 Filed 1–19–24; 8:45 am]

BILLING CODE 6355–01–P

[1] During the comment period for this notice, read-only copies of the NFSI standards referenced in the petition are available for viewing at *https://nfsi.org/nfsi-standards-portal/.*

[2] The docketing notice for CP 16–1 is available at 80 FR 75,639 (Dec. 3, 2015).

[3] Staff's briefing package recommending that the Commission deny petition CP 16–1 is available at: *https://www.cpsc.gov/s3fs-public/Petition%20CP%2016-1%20-%20Labeling%20Requirements%20Regarding%20Slip-Resistance%20of%20Floor%20Coverings%20-%20December%207%202016.pdf.* The Record of Commission Action directing staff to prepare a denial letter is available at: *https://www.cpsc.gov/s3fs-public/RCA%20-%20Petition%20CP%2016-1%20Labeling%20Requirements%20Regarding%20Slip-Resistance%20of%20Floor%20Coverings%20121316.pdf.* The draft denial letter is available at: *https://www.cpsc.gov/s3fs-public/Draft%20Letter%20to%20Petitioner%20Regarding%20Denial%20of%20Petition%20CP-16-1%20Floor%20Coverings.pdf.* The Record of Commission Action approving the issuance of the draft denial letter is available at: *https://www.cpsc.gov/s3fs-public/RCA%20-%20Draft%20Letter%20to%20Petitioner%20Regarding%20Denial%20of%20Petition%20CP%2016-1%20Floor%20Coverings%20011817_0.pdf.*

[4] The docketing notice for CP 18–2 is available at 83 FR 26228 (June 6, 2018).

[5] Staff's briefing package recommending that the Commission deny petition CP 18–2 is available at: *https://www.cpsc.gov/s3fs-public/Petition%20CP%2018-2%20-%20Labeling%20Requriements%20Regarding%20Slip-Resistance%20of%20Fl....pdf.* The Record of Commission Action directing staff to prepare a draft denial letter is available at: *https://www.cpsc.gov/s3fs-public/RCA%20-%20Petition%20CP%2018-2%20Labeling%20Requirements%20Regarding%20Slip-Resistance%20of%20Floor%20Coverings.pdf.* The draft denial letter is available at: *https://www.cpsc.gov/s3fs-public/2018%20Denial%20Letter%20for%20Petition%20CP%2018-2%20-%20Seeking%20Labeling%20Requirments%20for%20Slip-Resistance%20of%20Floor%20Coverings%20-%20080719.pdf.* The Record of Commission Action approving the issuance of the draft denial letter is available at: *https://www.cpsc.gov/s3fs-public/RCA-Denial%20Letter%20-%20CP%2018-2%20Seeking%20Labeling%20Requirements%20for%20Slip-Resistance%20of%20Floor%20Coverings.pdf.*

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, January 24, 2024—10:00 a.m.

PLACE: Virtual.

STATUS: Commission Meeting—Closed to the Public.

MATTERS TO BE CONSIDERED:

Meeting Matter: Briefing Matters.

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: January 17, 2024.

Alberta Mills,

Commission Secretary.

[FR Doc. 2024–01212 Filed 1–18–24; 11:15 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0192]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Entry Evidence and Evaluation & Exit Evidence Forms

AGENCY: Office of Finance and Operations (OFO), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before February 21, 2024.

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 Cleveland Knight, 202–987–0064.

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: Entry Evidence and Evaluation & Exit Evidence Forms.

OMB Control Number: 1894–NEW.

Type of Review: A new ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 819.

Total Estimated Number of Annual Burden Hours: 2,927.

Abstract: ED will use the Entry Evidence ICR form and the Evaluation & Exit Evidence ICR form for discretionary grant programs that: (1) Use the standard ED 524–B Grant Performance Report form as approved by OMB. The use of the standard ED 524–B Grant Performance Report promotes the standardization and streamlining of ED discretionary grant performance reporting. These performance reporting components are necessary to standardize information collection about Entry evidence, and Evaluation & Exit evidence use in grant implementation and to ensure a better, more comprehensive understanding of the use of evidence from what is provided in a grant application to the actual implementation of the grant project.

Dated: January 17, 2024.

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. 2024–01107 Filed 1–19–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Eligibility Designations and Applications for Waiving Eligibility Requirements; Programs Under Parts A and F of Title III and Programs Under Title V of the Higher Education Act of 1965, as Amended (HEA)

AGENCY: Office of Postsecondary Education, Department of Education (Department).

ACTION: Notice.

SUMMARY: The Department announces the process for the designation of eligible institutions and invites applications for waivers of eligibility requirements for fiscal year (FY) 2024, for the programs listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES:

Applications Available: January 22, 2024.

Deadline for Transmittal of Applications: February 27, 2024.

FOR FURTHER INFORMATION CONTACT: Jason Cottrell, Ph.D., Institutional Service, U.S. Department of Education, 400 Maryland Avenue SW, Room 5C122, Washington, DC 20202. Telephone: (202) 453–7530 or (202) 262–1833. Email: *Jason.Cottrell@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: The Department announces the process for the designation of eligible institutions and invites applications for waivers of eligibility requirements for FY 2024 for the following programs:

1. *Programs authorized under title III, part A of the HEA:* Strengthening Institutions Program (Part A SIP), Alaska Native and Native Hawaiian-Serving Institutions (Part A ANNH), Predominantly Black Institutions (Part A PBI), Native American-Serving Nontribal Institutions (Part A NASNTI), and Asian American and Native american Pacific Islander-Serving Institutions (Part A AANAPISI).

2. *Programs authorized under title III, part F of the HEA:* Hispanic-Serving Institutions STEM and Articulation (Part F HSI STEM and Articulation), Predominantly Black Institutions (Part F PBI), Alaska Native and Native Hawaiian-Serving Institutions (Part F ANNH), Native American-Serving Nontribal Institutions (Part F NASNTI), and Asian American and Native American Pacific Islander-Serving Institutions (Part F AANAPISI).

3. *The program authorized under title V part A of the HEA:* Developing Hispanic-Serving Institutions (Part A HSI).

4. *The program authorized under title V part B of the HEA:* Promoting Postbaccalaureate Opportunities for Hispanic Americans (Part B PPOHA).

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Programs: The Part A SIP, Part A ANNH, Part A PBI, Part A NASNTI, and Part A AANAPISI programs are authorized under title III, part A of the HEA. The Part F HSI STEM and Articulation, Part F PBI, Part F ANNH, Part F NASNTI, and Part F AANAPISI programs are authorized under title III, part F of the HEA. The HSI and PPOHA programs are authorized under title V of the HEA. Please note that certain programs addressed in this notice have the same or similar names as other programs that are authorized under a different statutory authority. For this reason, we

include the statutory authority within the acronym for certain programs.

Under the programs discussed above, institutions are eligible to apply for grants if they meet specific statutory and regulatory eligibility requirements. An institution of higher education that is designated as an eligible institution may also receive a waiver of certain non-Federal cost-sharing requirements for one year under the Federal Supplemental Educational Opportunity Grant (FSEOG) program authorized by title IV, part A of the HEA and the Federal Work-Study (FWS) program authorized by section 443 of the HEA. Qualified (eligible) institutions may receive the FSEOG and FWS waivers for one year even if they do not receive a grant under a title III or V grant program. An applicant that receives a grant from the Student Support Services (SSS) program that is authorized under section 402D of the HEA, 20 U.S.C. 1070a–14, may receive a waiver of the required non-Federal cost share for institutions for the duration of the grant. An applicant that receives a grant from the Undergraduate International Studies and Foreign Language (UISFL) program that is authorized under section 604 of the HEA, 20 U.S.C. 1124, may receive a waiver or reduction of the required non-Federal cost share for institutions for the duration of the grant.

Sections 312, 502, and 512 of the HEA, 34 CFR 607.2–607.5, and 34 CFR 606.2–606.5 include many of the basic eligibility requirements for grant programs authorized under titles III and V of the HEA. Sections 312(b)(1)(B) and 502(a)(2)(A) of the HEA provide that, to be eligible for these programs, an institution of higher education's average ''educational and general expenditures'' (E&G) per full-time equivalent (FTE) undergraduate student must be less than the average E&G expenditures per FTE undergraduate student of institutions that offer similar instruction (public 2-year, public 4-year, private 2-year, and private 4-year) in that year.

The National Center for Education Statistics (NCES) calculates Core Expenses per FTE of institutions, a statistic like E&G per FTE. Both E&G per FTE and Core Expenses per FTE are based on regular operational expenditures of institutions (excluding auxiliary enterprises, independent operations, and hospital expenses). They differ only in that E&G per FTE is based on fall undergraduate enrollment, while Core Expenses per FTE is based on 12-month undergraduate enrollment for the academic year.

To avoid inconsistency in the data submitted to, and produced by, the Department, for the purpose of sections 312(b)(1)(B) and 502(a)(2)(A) of the HEA, E&G per FTE is calculated using the same methodology as Core Expenses per FTE. Accordingly, the Department will apply the NCES methodology for calculating Core Expenses per FTE. Institutions requesting an eligibility exemption determination must use the Core Expenses per FTE data reported to NCES' Integrated Postsecondary Education Data System (IPEDS) for the most currently available academic year, in this case academic year 2021–2022.

Special Note: To qualify as an eligible institution under the grant programs listed in this notice, your institution must satisfy several criteria. For most of these programs, these criteria include those that relate to the enrollment of needy students and to the Core Expenses per FTE for a specified base year. The most recent data available in IPEDS for Core Expenses per FTE are for base year 2021–2022. To award FY 2024 grants in a timely manner, we will use these data to evaluate eligibility.

Each institution interested in either applying for a new grant under the titles III or V programs addressed in this notice, or requesting a waiver of the title IV non-Federal cost share, must be designated as an eligible institution in FY 2024. *See* 34 CFR 606.5 and 607.5.

Note: Please be advised that final eligibility is program specific. Applicants should refer to the program in question for programmatic requirements. Further information regarding eligibility is set forth below.

Eligible Applicants: The eligibility requirements for the programs authorized under part A of title III of the HEA are in sections 312 and 317–320 of the HEA (20 U.S.C. 1058, 1059d–1059g) and in 34 CFR 607.2–607.5. The regulations may be accessed at *www.ecfr.gov/cgi-bin/text-idx?SID=bc12bf5d685021e069cd1a15352b381a&mc=true&node=pt34.3.607&rgn=div5.* The eligibility requirements for the programs authorized by part F of title III of the HEA are in section 371 of the HEA (20 U.S.C. 1067q). There are currently no specific regulations for these programs.

The eligibility requirements for the title V HSI program are in part A of title V of the HEA and in 34 CFR 606.2–606.5. The regulations may be accessed at *www.ecfr.gov/cgi-bin/text-idx?SID=bc12bf5d685021e069cd1a15352b381a&mc=true&node=pt34.3.606&rgn=div5l.*

The requirements for the PPOHA program are in part B of title V of the HEA and in the notice of final requirements published in the **Federal Register** on July 27, 2010 (75 FR 44056), and in 34 CFR 606.2(a) and (b) and 606.3–606.5.

The Department has instituted a process known as the Eligibility Matrix (EM), under which we use information institutions submitted to IPEDS to determine which institutions meet the basic eligibility requirements for the programs authorized by title III or V of the HEA listed above. The data are utilized in the Department's eligibility system to calculate and determine which institutions meet the eligibility requirements. To make eligibility determinations for FY 2024, we use an institution's 2021–2022 enrollment and fiscal data. Beginning January 22, 2024, an institution will be able to review the Department's eligibility decision by checking the eligibility system linked through the Department's Institutional Service Eligibility website: *http://www2.ed.gov/about/offices/list/ope/idues/eligibility.html.* The direct link is *https://HEPIS.ed.gov/.*

During the application period, the EM can be reviewed within the eligibility system (*https://HEPIS.ed.gov*). The eligibility system maintains a record of all postsecondary institutions that are potentially eligible to apply for funding in the titles III or V grant programs mentioned above. If the eligibility system's entry for your institution indicates your institution is eligible, you will not need to apply for eligibility or submit a waiver request as described in this notice. Rather, if you choose to apply for the grant, you may print out the eligibility letter directly. If your institution is not shown as eligible, you must submit the application discussed in this notice before the application deadline of February 27, 2024.

To check your institution's eligibility, go to *https://HEPIS.ed.gov/,* and log into the system using a *Login.gov* account. If you are not sure whether you have an account in the system, click the ''Request Account'' button. If you do not have an account, the system will walk you through setup. Note that it may take up to five business days to verify user identity and to complete new account setup, so please allow enough time to complete the application. If the Grant Eligibility Application (GEA) system is open for new applications, you may check your institution's eligibility status by clicking the ''View pre-Eligibility Information'' button. Your institution's eligibility information will display.

If the system does not show that your institution is eligible for a program you can apply for a waiver or reconsideration using the process described in this notice. The application process mirrors that used in previous years. You will first complete an application on the website at *https://HEPIS.ed.gov/.* If you remain ineligible

based on your application, you will choose the waiver option(s) on the website to submit the required information and supporting documentation.

Once all waiver decisions are made, the data from the eligibility system will be used to build a final EM that will be published on the Department's eligibility website *https://www2.ed.gov/about/offices/list/ope/idues/eligibility.html.*

Please note that through this process, the Department does not certify, nor designate, an institution a Minority-Serving Institution or Hispanic-Serving Institution. This eligibility determination relates only to the institution's ability to apply for grants under certain titles III and V grant programs, as discussed in this notice.

Note: Institutions that submit a waiver request for either the Core Expenses per FTE or the Needy Student requirement must submit the required documents and supporting data and evidence by the deadline. All reviews and decisions will be made approximately two weeks after the deadline.

Enrollment of Needy Students: As noted above, to qualify as an eligible institution under the grant programs listed in this notice, your institution must satisfy several criteria, including those that relate to the enrollment of needy students and to the Core Expenses per FTE student count for the specified base year.

As to the enrollment of needy students, for programs under titles III and V (excluding the PBI programs), an institution is considered to have an enrollment of needy students if it meets either of the following two criteria: (1) at least 50 percent of its degree-seeking students received financial assistance under the Federal Pell Grant, FSEOG, or FWS programs; or (2) the percentage of its undergraduate degree-seeking students who were enrolled on at least a half-time basis and received Federal Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants at comparable institutions that offer similar instruction.

To qualify under the second criterion, an institution's Federal Pell Grant percentage for base year 2021–2022 must be more than the median for its category of comparable institutions provided in the 2021–2022 Median Pell Grant and Average Core Expenses per FTE Student Table in this notice. If your institution qualifies only under the first criterion, you must submit an application containing the data necessary to satisfy the first criterion (showing at least 50 percent of your degree-seeking students received financial assistance under one of several Federal student aid programs (the Federal Pell Grant, FSEOG, or FWS programs)), since these data are not available in IPEDS.

''Enrollment of Needy Students'' for purposes of the Part A PBI program is separately defined in section 318(b)(2) of the HEA, and for purposes of the Part F PBI program is defined in section 371(c)(3) of the HEA.

Core Expenses per FTE Student: For each of the following programs, an institution should compare its base year 2021–2022 Core Expenses per FTE student to the average Core Expenses per FTE student for its category of comparable institutions using the 2021–2022 Median Pell Grant and Average Core Expenses per FTE Student Table in this notice: title III, Part A SIP; Part A ANNH; Part A PBI; Part A NASNTI; Part A AANAPISI; title III, Part F HSI STEM and Articulation; Part F PBI; Part F ANNH; Part F NASNTI; Part F AANAPISI; title V, Part A HSI; and title V, Part B PPOHA. An institution satisfies this program eligibility requirement if its Core Expenses for the 2021–2022 base year are less than the average Core Expenses of its comparable institutional category.

Core Expenses are defined as the total expenses for the essential education activities of the institution. Core Expenses for public institutions reporting under the Governmental Accounting Standards Board (GASB) requirements include expenses for instruction, research, public service, academic support, student services, institutional support, operation and maintenance of plant, depreciation, scholarships and fellowships, interest, and other operating and non-operating expenses. Core Expenses for institutions reporting under the Financial Accounting Standards Board (FASB) standards (primarily private, not-for-profit, and for-profit institutions) include expenses for instruction, research, public service, academic support, student services, institutional support, net grant aid to students, and other expenses. Core Expenses do not include Federal student aid for the purposes of eligibility. For both FASB and GASB institutions, Core Expenses do not include expenses for auxiliary enterprises (*e.g.,* bookstores, dormitories), hospitals, and independent operations.

The following table identifies base year 2021–2022 median Federal Pell Grant percentages and average Core Expenses per FTE student for the four categories of comparable institutions:

Type of institution	Base year 2021–2022 Median Pell grant percentage	Base year 2021–2022 average core expenses per FTE student
2-year Public Institutions	44	$19,274
2-year Nonprofit Private Institutions	52	17,273
4-year Public Institutions	37	37,667
4-year Nonprofit Private Institutions	36	46,779

Waiver Information: Institutions that do not meet the needy student enrollment requirement or the Core Expenses per FTE requirement may apply to the Secretary for a waiver of these requirements, as described in sections 392 and 522 of the HEA, and in the implementing regulations at 34 CFR 606.3(b), 606.4(c) and (d), 607.3(b), and 607.4(c) and (d).

Institutions requesting a waiver of the needy student enrollment requirement or the Core Expenses per FTE requirement must include in their application detailed evidence supporting the waiver request, as described in the instructions for completing the application.

The regulations governing the Secretary's authority to grant a waiver of the needy student requirement refer to ''low-income'' students or families, at 34 CFR 606.3(b)(2) and (3) and 607.3(b)(2) and (3). The regulations at 34 CFR 606.3(c) and 607.3(c) define ''low-income'' as an amount that does not exceed 150 percent of the amount equal to the poverty level, as established by the U.S. Census Bureau.

For purposes of this waiver provision, the following table sets forth the low-income levels (at 150 percent) for various family sizes:

2022 ANNUAL LOW-INCOME LEVELS

Size of family unit	Family income for the 48 contiguous states, DC, and outlying jurisdictions	Family income for Alaska	Family income for Hawaii
1	$20,385	$25,485	$23,445
2	27,465	34,335	31,590
3	34,545	43,185	39,735
4	41,625	52,035	47,880
5	48,705	60,885	56,025
6	55,785	69,735	64,170
7	62,865	78,585	72,315
8	69,945	87,435	80,460

Note: We use the 2022 annual low-income levels because those are the amounts that apply to the family income reported by students enrolled for the fall 2021 semester. For family units with more than eight members, add the following amount for each additional family member: $7,080 for the contiguous 48 States, the District of Columbia, and outlying jurisdictions; $8,850 for Alaska; and $8,145 for Hawaii.

The figures shown under family income represent amounts equal to 150 percent of the family income levels established by the U.S. Census Bureau for determining poverty status. The poverty guidelines were published on January 21, 2022, in the **Federal Register** by the U.S. Department of Health and Human Services (87 FR 3315), with an effective date of January 12, 2022.

Information about ''metropolitan statistical areas'' referenced in 34 CFR 606.3(b)(4) and 607.3(b)(4) may be obtained at: *https://www.census.gov/programs-surveys/metro-micro/geographies/reference-maps.html.*

Electronic Submission of Waiver Applications: If your institution does not appear in the eligibility system as eligible for a program to which you seek to apply, you must apply for a waiver of the eligibility requirements. To request a waiver, you must upload a narrative at *https://HEPIS.ed.gov/.*

Exception to the Electronic Submission Requirement: We discourage paper applications, but if electronic submission is not possible (*e.g.,* you do not have access to the internet), you must provide a written statement that you intend to submit a paper application. This written statement must be postmarked no later than two weeks before the application deadline date (14 calendar days or, if the 14th calendar day before the application deadline date falls on a weekend or Federal holiday, the next business day following the weekend or Federal holiday).

Please send this statement to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

If you submit a paper application, you must mail your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Attention: Jason Cottrell, 400 Maryland Avenue SW, Room 5C122, Washington, DC 20202.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for certain title III programs in 34 CFR part 607, and for the HSI program in 34 CFR part 606. (e) The notice of final requirements for the PPOHA program published in the **Federal Register** on July 27, 2010 (75 FR 44056).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Note: There are no program-specific regulations for the Part A PBI, Part A NASNTI, and Part A AANAPISI programs or any of the title III, part F programs. Also, the HEA has been amended since the Department last issued regulations for programs established under titles III and V of that statute. Accordingly, we encourage each potential applicant to read applicable sections of the HEA to fully understand all applicable program eligibility requirements.

II. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Nasser H. Paydar,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2024–00707 Filed 1–19–24; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2024–0015; FRL–11665–01–OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or ''the Act''), the Environmental Protection Agency (''EPA'' or ''the Agency'') is providing notice of a proposed consent decree in *Center for Community Action and Environmental Justice* v. *United States Environmental Protection Agency,* No. 4:23–cv–03571–YGR (N.D. Cal.). On July 19, 2023 and August 29, 2023, Plaintiff Center for Community Action and Environmental Justice and Plaintiffs East Yard Communities for Environmental Justice, People's Collective for Environmental Justice, Sierra Club, and Communities for a Better Environment (collectively, ''Plaintiffs''), respectively, filed a complaint in the United States District Court for the Northern District of California alleging that EPA failed to perform its non-discretionary duty to take final action to approve or disapprove, or conditionally approve, in whole or in part, the California state implementation plan (SIP) submittal entitled South Coast Air Quality Management District Rule 2305, Warehouse Indirect Source Rule—Warehouse Actions and Investments to Reduce Emissions Program (SCAQMD Rule 2305), submitted to EPA by the California Air Resources Board on or about August 13, 2021. The two cases are now consolidated. The proposed consent decree would establish a deadline for the EPA Administrator (''Administrator'') to sign a notice of final rulemaking for this action.

DATES: Written comments on the proposed consent decree must be received by February 21, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2024–0015, online at *https://www.regulations.gov* (EPA's preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action. Comments received may 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 ''Additional Information about Commenting on the Proposed Consent Decree'' heading under the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Yasmín Pérez Ortiz, Air and Radiation Law Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone: (202) 564–1077; email address: *perez-ortiz.yasmin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining a Copy of the Proposed Consent Decree

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2024–0015) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

The electronic version of the public docket for this action contains a copy of the proposed consent decree, and is available through *https://www.regulations.gov.* You may use *https://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search.''

II. Additional Information About the Proposed Consent Decree

Plaintiffs filed a complaint in the United States District Court for the Northern District of California alleging that EPA failed to perform its nondiscretionary duty under CAA section 110(k)(2) to approve, disapprove, or conditionally approve, in whole or in part SCAQMD Rule 2305, within 12 months of a determination of completeness by EPA or a submittal being deemed complete by operation of law. On February 13, 2022, the SCAQMD Rule 2305 submittal was deemed complete by operation of law and EPA had a mandatory duty to take final action on the SIP submittal by February 13, 2023.

Under the terms of the proposed consent decree, no later than July 17, 2024, the Administrator would be required to sign a notice of final rulemaking to approve, disapprove, conditionally approve, or approve in part and disapprove in part, the SIP submittal from California entitled South Coast Air Quality Management District Rule 2305, Warehouse Indirect Source Rule—Warehouse Actions and Investments to Reduce Emissions Program. For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

III. Additional Information About Commenting on the Proposed Consent Decree

Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2024–0015, via *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from this docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other

information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Note that written comments containing CBI and submitted by mail may be delayed and deliveries or couriers will be received by scheduled appointment only.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *https://www.regulations.gov* website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

Gautam Srinivasan,

Associate General Counsel.

[FR Doc. 2024–01113 Filed 1–19–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2023–0098; FRL–10582–09–OCSPP]

Certain New Chemicals or Significant New Uses; Statements of Findings for November 2023

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) requires EPA to publish in the **Federal Register** a statement of its findings after its review of certain TSCA submissions when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to premanufacture notices (PMNs), microbial commercial activity notices (MCANs), and significant new use notices (SNUNs) submitted to EPA under TSCA. This document presents statements of findings made by EPA on such submissions during the period from November 1, 2023, to November 30, 2023.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2023–0098, is available online at *https://www.regulations.gov* or in-person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Rebecca Edelstein, New Chemical Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–1667; email address: *edelstein.rebecca@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

This action provides information that is directed to the public in general.

B. What action is the Agency taking?

This document lists the statements of findings made by EPA after review of submissions under TSCA section 5(a) that certain new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment. This document presents statements of findings made by EPA during the reporting period.

C. What is the Agency's authority for taking this action?

TSCA section 5(a)(3) requires EPA to review a submission under TSCA section 5(a) and make one of several specific findings pertaining to whether the substance may present unreasonable risk of injury to health or the environment. Among those potential findings is that the chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment per TSCA Section 5(a)(3)(C).

TSCA section 5(g) requires EPA to publish in the **Federal Register** a statement of its findings after its review of a submission under TSCA section 5(a) when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to PMNs, MCANs, and SNUNs submitted to EPA under TSCA section 5.

Anyone who plans to manufacture (which includes import) a new chemical substance for a non-exempt commercial purpose and any manufacturer or processor wishing to engage in a use of a chemical substance designated by EPA as a significant new use must submit a notice to EPA at least 90 days before commencing manufacture of the new chemical substance or before engaging in the significant new use.

The submitter of a notice to EPA for which EPA has made a finding of ''not likely to present an unreasonable risk of

injury to health or the environment'' may commence manufacture of the chemical substance or manufacture or processing for the significant new use notwithstanding any remaining portion of the applicable review period.

D. Does this action have any incremental economic impacts or paperwork burdens?

No.

II. Statements of Findings Under TSCA Section 5(a)(3)(C)

In this unit, EPA provides the following information (to the extent that such information is not claimed as Confidential Business Information (CBI)) on the PMNs, MCANs and SNUNs for which, during this period, EPA has made findings under TSCA section 5(a)(3)(C) that the new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment:

The following list provides the EPA case number assigned to the TSCA section 5(a) submission and the chemical identity (generic name if the specific name is claimed as CBI).

• P–23–0077, Alkanepolyoxy acid, alkyl substituted (Generic Name).

To access EPA's decision document describing the basis of the ''not likely to present an unreasonable risk'' finding made by EPA under TSCA section 5(a)(3)(C), look up the specific case number at *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/chemicals-determined-not-likely*.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: January 16, 2024.

Shari Z. Barash,

Acting Director, New Chemicals Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2024–01122 Filed 1–19–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–02–2024–7301; FRL–11630–01–R2]

Proposed Settlement Agreement Pursuant to RCRA, CERCLA and the Authority of the Attorney General of the United States To Compromise and Settle Claims for the Former SCPC Facility, St. Croix, United States Virgin Islands

AGENCY: Environmental Protection Agency.

ACTION: Notice and request for public comment.

SUMMARY: In accordance with the Solid Waste Disposal Act, as amended (commonly referred to as RCRA), and the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), notice is hereby given by the U.S. Environmental Protection Agency (''EPA''), Region 2, of a proposed settlement agreement (''Settlement'') pursuant to RCRA and CERCLA with St. Croix Petrochemical Corporation (''SCPC'') (''Settling Party'') related to the former SCPC manufacturing facility that operated in the past on a portion of the former HOVENSA refinery (''SCPC Facility'') in St. Croix, United States Virgin Islands (''USVI'').

DATES: Comments must be submitted on or before February 21, 2024.

ADDRESSES: *Reviewing Proposed Settlement:* The proposed Settlement can be viewed online at *https://www.epa.gov/ny/proposed-settlement-agreement-former-scpc-facility-st-croix-united-states-virgin-islands.* A copy of the proposed Settlement may also be obtained from the EPA contact person identified below. Submission of comments must be via electronic mail to *vargas.ricardito@epa.gov*. Comments should reference the SCPC Settlement, St. Croix, USVI, Index No. RCRA–02–2024–7301. For those unable to communicate via electronic mail please contact the EPA employee identified below.

FOR FURTHER INFORMATION CONTACT: Ricardito Vargas, Land and Redevelopment Programs Branch, Region 2, U.S. Environmental Protection Agency, 290 Broadway, 25th Floor, New York, NY 10007–1866. Email: *vargas.ricardito@epa.gov.* Telephone: 212–637–3703.

SUPPLEMENTARY INFORMATION: This Settlement would resolve the liability of SCPC for soil and groundwater contamination related to its former para-xylene manufacturing facility, a 20-acre portion of the former HOVENSA refinery in St. Croix. This Settlement would be contemporaneously finalized and become effective with a companion settlement between SCPC and the Hovensa Environmental Response Trust (''ERT''). The ERT was established during the HOVENSA, LLC bankruptcy proceedings, to, among other things, implement RCRA corrective measures at the former HOVENSA facility. Under both settlement agreements, SCPC would transfer its remaining assets of approximately $1.7 million to the ERT to help fund remediation of contamination caused by SCPC at the former HOVENSA facility. This payment would be made within 60 days of the Effective Date of the Settlement. The Settlement includes a covenant by EPA not to sue SCPC under sections 3013 and 7003 of RCRA and sections 106 and 107(a) of CERCLA regarding the SCPC Facility, contingent upon SCPC transferring its remaining assets to the ERT. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the Settlement. EPA and the United States Department of Justice will consider all comments received and may modify or withdraw consent to the Settlement if comments received disclose facts or considerations that indicate that the proposed Settlement is inappropriate, improper, or inadequate. The response to any comments can be viewed online at *https://www.epa.gov/ny/proposed-settlement-agreement-former-scpc-facility-st-croix-united-states-virgin-islands.* A copy of the response to comments may be obtained from the EPA contact person identified above. Commenters may request an opportunity for a public meeting in the affected area in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

Alyssa Arcaya,

Deputy Regional Administrator, Region 2, Environmental Protection Agency.

[FR Doc. 2024–01111 Filed 1–19–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 196072]

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

DATES: The agency must receive comments on or before March 22, 2024.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, 202–418–2054, *Rolanda-Faye.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: The following applicants filed AM or FM proposals to change the community of license: EAST TEXAS COMMUNITY BROADCASTING, KKJX(FM), FAC. ID NO. 767072, FROM: JACKSONVILLE, TX, TO: MAYDELLE, TX, FILE NO. 0000224170; M. KENT FRANDSEN, KUNY(FM), FAC. ID NO. 762385, FROM: PARAGONAH, UT, TO: ENOCH,

UT, FILE NO. 0000233738; CSN INTERNATIONAL, INC., KYML(FM), FAC. ID NO. 767224, FROM: MOUNT LAGUNA, CA, TO: SAN DIEGO COUNTRY ESTATES, CA, FILE NO. 0000232741; WESTERN NORTH CAROLINA PUBLIC RADIO, WCQS(FM), FAC. ID NO. 71923, FROM: ASHEVILLE, NC, TO: MARS HILL, NC, FILE NO. 0000232164; and WESTERN NORTH CAROLINA PUBLIC RADIO, INC., WYQS(FM), FAC. ID NO. 40436, FROM: MARS HILL, NC, TO: ASHEVILLE, NC, FILE NO. 0000232165. The full text of these applications is available electronically via Licensing and Management System (LMS), *https://apps2int.fcc.gov/dataentry/public/tv/publicAppSearch.html.*

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2024–01123 Filed 1–19–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0085; –0149; –0194]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on the request to renew the existing information collections described below (OMB Control No. 3064–0085; –0149; –0194). The notices of the proposed renewal for these information collections were previously published in the **Federal Register** on November 15, 2023, allowing for a 60-day comment period.

DATES: Comments must be submitted on or before February 21, 2024.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7:00 a.m. and 5:00 p.m.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collection of information:

1. *Title:* Recordkeeping and Disclosure Requirements in Connection With Regulation B (Equal Credit Opportunity).

OMB Number: 3064–0085.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

TABLE 1—SUMMARY OF ESTIMATED ANNUAL BURDEN

[OMB No. 3064–0085]

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
1. Record Retention (Applications, Actions, Pre-Screened Solicitations) (1002.12) (Mandatory).	Recordkeeping (On Occasion)	2,917	1,333	00:03	194,418
2. Record Retention (Self-Testing) (1002.12(b)(6)) (Mandatory).	Recordkeeping (On Occasion)	1	1	00:03	0
3. Credit Reporting History (1002.10) (Mandatory).	Reporting (Monthly)	2,917	12	00:01	583
4. Demographic Information Collected for Monitoring Purposes (1002.13 (a) & (b)) (Mandatory).	Reporting (Annual)	2,917	276	00:01	13,418
5. Disclosure for Optional Self-Test (1002.5) (Mandatory).	Disclosure (On Occasion)	1	92	00:02	3
6. Notification of Action (1002.9) (Mandatory).	Disclosure (On Occasion)	2,917	333	00:03	48,568
7. Appraisal Report (1002.14(a)(1)) (Mandatory).	Disclosure (On Occasion)	2,917	276	00:03	40,255
8. Notice of Right to Appraisal (1002.14(a)(2)) (Mandatory).	Disclosure (On Occasion)	2,917	276	00:01	13,418
9. Recordkeeping of Credit Applications from Small Businesses (1002.107(a)) (Mandatory).	Recordkeeping (On Occasion)	1,612	873	00:10	234,546
10. Initial implementation of System to Support Requirements in IC 9 (Mandatory).	Recordkeeping (One-time)	973	1	456:00	443,688

TABLE 1—SUMMARY OF ESTIMATED ANNUAL BURDEN—Continued

[OMB No. 3064–0085]

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
11. Record Retention of Small Business Lending Data (1002.111) (Mandatory).	Recordkeeping (Annual)	1,612	1	00:10	269
12. Reporting Small Business Lending Data to CFPB (1002.109) (Mandatory).	Reporting (Annual)	639	1	120:00	76,680
13. Initial Implementation Activities to Support Requirements in IC 12 (Mandatory).	Reporting (One-time)	601	1	40:00	24,040
14. Notice of Nondiscrimination to Applicants (1002.107) (Mandatory).	Disclosure (On Occasion)	1,612	873	0:01	23,455
15. Initial implementation Activities for Requirements in IC 14 (Mandatory).	Disclosure (One-time)	973	1	40:00	38,920
16. ''Firewall'' Exception Notification (1002.108) (Required to obtain benefit).	Disclosure (On Occasion)	967	873	0:01	14,070
17. Initial Implementation Activities for Requirements in IC 16 (Required to obtain benefit).	Disclosure (One-time)	322	1	40:00	12,880
18. Website Disclosure of Small Business Lending Data (1002.110(c) & (d)) (Mandatory).	Disclosure (One-time)	601	1	8:00	4,808
Total Annual Burden (Hours)					*1,184,019*

Source: FDIC.

Note: The annual burden estimate for a given collection is calculated in two steps. First, the total number of annual responses is calculated as the whole number closest to the product of the annual number of respondents and the annual number of responses per respondent. Then, the total number of annual responses is multiplied by the time per response and rounded to the nearest hour to obtain the estimated annual burden for that collection. This rounding ensures the annual burden hours in the table are consistent with the values recorded in the OMB's regulatory tracking system.

General Description of Collection: Regulation B (12 CFR part 1002), issued by the Consumer Financial Protection Bureau (''CFPB''), prohibits creditors from discriminating against applicants on any bases specified by the Equal Credit Opportunity Act; imposes reporting, record keeping and disclosure requirements; establishes guidelines for gathering and evaluating credit information; and requires creditors to give applicants certain written notices.

The information collection is being revised to include 10 new information collection requirements created by subpart B, (sections 1002.101–1002.114),[1] which addresses lending to small businesses. The total estimated annual burden for this information collection is 1,184,019 hours, which represents an increase of 734,884 hours relative to the estimate of 449,135 reported by the OMB in 2021. The increase is primarily attributable to the inclusion of 10 new information collections introduced by subpart B, (sections 1002.101–1002.114) of the final rule issued by the CFPB in May 2023.

2. *Title:* Affiliate Marketing/Consumer Opt-out Notices.

OMB Number: 3064–0149.

Forms: None.

Affected Public: Insured state nonmember banks and state savings associations that have affiliates and consumers that have a relationship with the foregoing.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN

[OMB No. 3064–0149]

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
Affiliate Marketing Disclosure—Implementation. (Mandatory).	Third-Party Disclosure (Annual)	8	1	06:00	144
Consumer Opt Out Notices (Voluntary).	Third-Party Disclosure (Annual)	857,027	1	00:05	71,419
Affiliate Marketing Disclosure—Ongoing (Mandatory).	Third-Party Disclosure (Annual)	990	1	02:00	1,980

[1] *See* the final rule issued by the Consumer Financial Protection Bureau, ''Small Business Lending Under the Equal Credit Opportunity Act'' at 88 FR 35150 (May 31, 2023).

SUMMARY OF ESTIMATED ANNUAL BURDEN—Continued

[OMB No. 3064–0149]

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
Total Annual Burden (Hours)	.....	.....	.....	.....	*73,543*

Source: FDIC.

General Description of Collection: Section 214 of the FACT Act requires financial institutions that wish to share information about consumers with their affiliates, to inform such consumers that they have the opportunity to opt out of such marketing solicitations. The disclosure notices and consumer responses thereto comprise the elements of this collection of information. There is no change in the method or substance of the collection.

3. *Title:* Covered Financial Company Asset Purchaser Eligibility Certification.

OMB Number: 3064–0194.

Forms: 7300/10.

Affected Public: Any individual or entity that is a potential purchaser of assets from (1) the FDIC as receiver for a Covered Financial Company (CFC); or (2) a bridge financial company (BFC) which requires the approval of the FDIC, as receiver for the predecessor CFC and as the sole shareholder of the BFC (*e.g.,* the BFC's sale of a significant business line).

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN

[OMB No. 3064–0194]

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
Covered Financial Company Asset Sales Purchaser Eligibility Certification.	Reporting	66	1	02:30	165
Total Annual Burden (Hours)	.....	.....	.....	.....	*165*

Source: FDIC.

General Description of Collection: The Covered Financial Company (CFC) Asset Purchaser Eligibility implements the statutory requirement that assets held by the FDIC in the course of liquidating any covered financial company not be sold to persons who contributed in specified ways to the demise of a covered financial company. The FDIC implemented this requirement in its regulations at 12 CFR 380.13. Prospective purchasers are required to complete and submit a Purchaser Eligibility Certification (PEC) to the FDIC. The PEC is a self-certification by a prospective purchaser that it does not fall into any of the categories of individuals or entities that are prohibited by statute or regulation from purchasing assets of a CFC. The PEC will be required of any individual or entity that is a potential purchaser of assets from the FDIC, whether in its corporate capacity or as a conservator or receiver, for (1) a CFC; or (2) a Bridge Financial Company (BFC).

The FDIC is increasing the total burden associated with this collection from 5 hours to 165 hours. The estimate for the number of respondents has increased from 10 to 66. The responses per respondent is unchanged from the 2021 submission. The estimate for hours per response represents a 1.5-hour increase from the 2021 submission. This increase is due to a change in calculation methodology.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on January 16, 2024.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024–01092 Filed 1–19–24; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Thursday, January 25, 2024, at 10:00 a.m.

PLACE: Hybrid Meeting: 1050 First Street NE, Washington, DC (12th Floor) and virtual.

Note: for those attending the meeting in person, current COVID–19 safety protocols for visitors, which are based on the CDC COVID–19 hospital admission level in Washington, DC will be updated on the commission's contact page by the Monday before the meeting. See the contact page at *https://www.fec.gov/contact/*. If you would like to virtually access the meeting, see the instructions below.

STATUS: This meeting will be open to the public, subject to the above-referenced guidance regarding the COVID–19 hospital admission level and corresponding health and safety procedures. To access the meeting virtually, go to the commission's website *www.fec.gov* and click on the banner to be taken to the meeting page.

MATTERS TO BE CONSIDERED:

Draft Advisory Opinion 2023–11: VoteDown PAC

Audit Division Recommendation Memorandum on the Madison Project, Inc. (A21–11)

Management and Administrative Matters

FOR MORE INFORMATION CONTACT: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Individuals who plan to attend in person and who require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Laura E. Sinram, Secretary and Clerk, at (202) 694–1040 or *secretary@fec.gov,* at least 72 hours prior to the meeting date.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Laura E. Sinram,

Secretary and Clerk of the Commission.

[FR Doc. 2024–01268 Filed 1–18–24; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Notice of Board Meeting

DATES: January 23, 2024 at 10:00 a.m. EST.

ADDRESSES: Telephonic. Dial-in (listen only) information: Number: 1–202–599–1426, Code: 472 801 767#; or via web: *https://teams.microsoft.com/l/meetup-join/19:meeting_YWU3NGFmZjQtNGYwMy00YjVlLWExYTEtMTkxODhiZTk0ODFi@thread.v2/0?context=%7B%22Tid%22:%223f6323b7-e3fd-4f35-b43d-1a7afae5910d%22,%22Oid%22:%229248ab6a-9efc-44f2-97e7-a7417d24b91f%22%7D.*

FOR FURTHER INFORMATION CONTACT: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

SUPPLEMENTARY INFORMATION:

Board Meeting Agenda

Open Session

1. Approval of the December 14, 2023, Board Meeting Minutes
2. Monthly Reports
   (a) Participant Report
   (b) Legislative Report
3. Quarterly Reports
   (c) Investment Review
   (d) Budget Review
   (e) Audit Status
4. Annual Expense Ratio Review
5. DOL Annual Audit Presentation
6. Internal Audit Update
7. Financial Wellness Survey Update
8. Record Keeping Service Update

Closed Session

9. Information covered under 5 U.S.C. 552b (c)(6), (c)(9)(B) and (c)(10).

Authority: 5 U.S.C. 552b (e)(1).

Dated: January 17, 2024.

Dharmesh Vashee,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2024–01098 Filed 1–19–24; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Revised Jurisdictional Thresholds for Section 8 of the Clayton Act

AGENCY: Federal Trade Commission.

ACTION: Annual notice of revision.

SUMMARY: The Federal Trade Commission announces the revised thresholds for interlocking directorates required by the 1990 amendment of Section 8 of the Clayton Act.

DATES: January 22, 2024.

FOR FURTHER INFORMATION CONTACT: Christopher M. Grengs (202–326–2612), Bureau of Competition, Office of Policy and Coordination.

SUPPLEMENTARY INFORMATION: Section 8 of the Clayton Act prohibits, with certain exceptions, one person from serving as a director or officer of two competing corporations if two thresholds are met. Competitor corporations are covered by Section 8 if each one has capital, surplus, and undivided profits aggregating more than $10,000,000, with the exception that no corporation is covered if the competitive sales of either corporation are less than $1,000,000. Section 8(a)(5) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product. The new thresholds, which take effect immediately, are $48,559,000 for Section 8(a)(1), and $4,855,900 for Section 8(a)(2)(A).

Authority: 15 U.S.C. 19(a)(5).

April J. Tabor,

Secretary.

[FR Doc. 2024–00929 Filed 1–19–24; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0300; Docket No. 2023–0001; Sequence No. 9]

Submission for OMB Review; General Services Administration Acquisition Regulation; Implementation of Information Technology Security Requirements

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB information collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of the currently approved information collection requirement regarding implementation of GSA information technology security requirements.

DATES: Submit comments on or before February 21, 2024.

ADDRESSES: Written comments and recommendations for this 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 Review—Open for Public Comments''; or by using the search function.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Carroll, Procurement Analyst, at *GSARpolicy@gsa.gov* or 817–978–0609.

SUPPLEMENTARY INFORMATION:

A. Purpose

General Services Acquisition Regulations (GSAR) requires that contractors accessing information systems that support the operations and assets of GSA, another agency, contractor, or other source, to comply with GSA's IT security policies including GSA IT's security policies outlined in CIO 09–48, IT Security Procedural Guide: Security and Privacy IT Acquisition Requirements and CIO 12–2018, IT Policy Requirements Guide.

B. Annual Reporting Burden

Respondents: 117.

Responses per Respondent: 2.

Total Annual Responses: 234.

Hours per Response: 5.

Total Burden Hours: 1,170.

C. Public Comments

A 60-day notice was published in the **Federal Register** at 88 FR 73018 on October 24, 2023. No comments were received.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the Regulatory Secretariat Division (MVCB), at *GSARegSec@gsa.gov.* Please cite OMB Control No. 3090–0300, Implementation of Information

Technology Security Requirements, in all correspondence.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2024–01105 Filed 1–19–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Child Care and Development Fund Plan Preprint for States/Territories for FFY 2025–2027 (ACF–118) and Extension of Child Care and Development Fund Plan Preprint for States/Territories for FFY 2022–2024 (OMB #0970–0114)

AGENCY: Office of Child Care; Administration for Children and Families; Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) is requesting an extension without changes of the form ACF–118: Child Care and Development Fund Plan Preprint for States/Territories for FFY 2022–2024 (OMB #0970–0114, expiration 02/29/2024), and a separate three-year extension of the form ACF–118: Child Care and Development Fund Plan Preprint for States/Territories for FFY 2025–2027. There are changes requested to the form ACF–118: Child Care and Development Fund Plan Preprint for States/Territories for FFY 2025–2027 to improve formatting, collect additional information about program implementation, and streamline questions.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The Child Care and Development Fund (CCDF) Plan (the Plan) for States and Territories is required from each CCDF Lead agency in accordance with Section 658E of the Child Care and Development Block Grant Act of 1990 (CCDBG Act), as amended, CCDBG Act of 2014 (Pub. L. 113–186), and 42 U.S.C. 9858. The Plan, submitted on the ACF–118, is required triennially, and remains in effect for three years. The Plan provides ACF and the public with a description of and assurance about the states' and territories' child care programs. These Plans are the applications for CCDF funds.

At this time, the ACF Office of Child Care (OCC) is proposing an extension of the approval of the currently approved CCDF Plan Preprint for FFY 2022–2024 to allow states and territories to continue to submit amendments for substantial program changes effective through September 30, 2024, as required. There are no changes proposed to the FFY 2022–2024 Plan Preprint. In addition, OCC is requesting comments on the proposed CCDF Plan Preprint for FFY 2025–2027. Updates were made to clarify questions, enhance the ability to align data with OCC monitoring data, reflect OCC priorities, ensure alignment with federal requirements, and facilitate grantee submission in the Child Care Automated Reporting System (CARS) data system.

Respondents: State and Territory Lead Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Annual burden hours
Child Care and Development Fund for States and Territories (ACF—118)	56	0.33	150	2,800

Estimated Total Burden Hours: 8,400; however, since Plans are required triennially, and remain in effect for 3 years, the actual *Total Annual* Burden Hours is 2,800.

Authority: Pub. L. 113–186 and 42 U.S.C. 9858.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2024–01058 Filed 1–19–24; 8:45 am]

BILLING CODE 4184–87–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–0015]

Notice of Approval of Product Under Voucher: Material Threat Medical Countermeasure Priority Review Voucher for QULIPTA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the approval of a product redeeming a material threat medical countermeasure (MCM) priority review voucher. The Federal Food, Drug, and Cosmetic Act (FD&C Act) authorizes FDA to award priority review vouchers to sponsors of approved material threat MCM product applications that meet certain criteria. FDA is required to publish notice of the issuance of material threat MCM priority review vouchers as well as the approval of products redeeming a voucher. FDA has determined that QULIPTA (atogepant) tablets, approved September 28, 2021, meets the redemption criteria.

FOR FURTHER INFORMATION CONTACT: Cathryn Lee, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–1394, email: *Cathryn.Lee@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under section 565A of the FD&C Act (21 U.S.C. 360bbb-4a), FDA will report the issuance of material threat MCM priority review vouchers and the approval of products for which a voucher was redeemed. FDA has determined that the application for QULIPTA (atogepant) tablets, approved September 28, 2021, meets the redemption criteria.

For further information about the material threat MCM Priority Review Voucher Program and for a link to the full text of section 565A of the FD&C Act, go to *https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/21st-century-cures-act-mcm-related-cures-provisions#prv.* For further information about QULIPTA (atogepant) tablets go to the ''Drugs@FDA'' website at *https://www.accessdata.fda.gov/scripts/cder/daf/.*

Dated: January 17, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–01108 Filed 1–19–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–5451]

Agency Information Collection Activities; Proposed Collection; Comment Request; Prescription Drug Marketing: Administrative Procedures, Policies, and Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection associated with Agency regulations that govern prescription drug marketing.

DATES: Either electronic or written comments on the collection of information must be submitted by March 22, 2024.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 22, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–N–5451 for ''Prescription Drug Marketing: Administrative Procedures, Policies, and Requirements.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–976–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined

in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Prescription Drug Marketing: Administrative Procedures, Policies, and Requirements—21 CFR Part 203

OMB Control Number 0910–0435—Extension

This information collection helps support FDA regulations. Specifically, the Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Prescription Drug Marketing Act of 1987 (Pub. L. 100–293) (PDMA) and Prescription Drug Amendments of 1992, establishes requirements for the: (1) reimportation and wholesale distribution of prescription drugs; (2) sale, purchase, or trade of, or the offer to sell, purchase, or trade, prescription drugs that were purchased by hospitals or healthcare entities or donated to charitable organizations; and (3) distribution of prescription drug samples. Because insufficient safeguards existed over the drug distribution system to prevent the introduction and retail sale of substandard, ineffective, or counterfeit drugs, and that a wholesale drug diversion submarket had developed that prevented effective control over the true sources of drugs, PDMA was enacted. PDMA is intended to ensure that drug products purchased by consumers are safe and effective and to avoid an unacceptable risk that counterfeit, adulterated, misbranded, subpotent, or expired drugs are sold. Requirements under PDMA are codified at part 203 (21 CFR part 203), Prescription Drug Marketing.

The regulations in part 203 include reporting and recordkeeping requirements intended to help achieve the following goals to: (1) ban the reimportation of prescription drugs produced in the United States, except when reimported by the manufacturer or under FDA authorization for emergency medical care; (2) ban the sale, purchase, or trade, or the offer to sell, purchase, or trade, of any prescription drug sample; (3) limit the distribution of drug samples to practitioners licensed or authorized to prescribe such drugs or to pharmacies of hospitals or other healthcare entities at the request of a licensed or authorized practitioner; (4) require licensed or authorized practitioners to request prescription drug samples in writing; (5) mandate storage, handling, and recordkeeping requirements for prescription drug samples; and (6) prohibit, with certain exceptions, the sale, purchase, or trade, or the offer to sell, purchase, or trade, of prescription drugs that were purchased by hospitals or other healthcare entities or that were donated or supplied at a reduced price to a charitable organization.

Respondents: Respondents to the information collection are persons or entities engaged in prescription drug marketing as described in FDA regulations at part 203.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours [2]
§ 203.11; Reimportation	1	1	1	0.5 (30 minutes)	0.5
§ 203.37(a); Falsification of records	140	2.14	300	0.25 (15 minutes)	75
§ 203.37(b); Loss or theft of samples	140	57.14	8,000	0.25 (15 minutes)	2,000
§ 203.37(c); Convictions	1	1	1	1	1
§ 203.37(d); Contact person	20	1	20	0.08 (5 minutes)	2
§ 203.39(g); Reconciliation report	1	1	1	1	1
Total			8,323		2,080

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Subpart C: Sale restrictions					
§ 203.23(a) and (b); Returned drugs	2,200	71.99	158,380	0.25 (15 minutes)	39,595
§ 203.23(c); Returned drugs storage documentation.	2,200	71.99	158,380	0.08 (5 minutes)	12,670

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]—Continued

21 CFR section activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Subpart D: Samples					
§§ 203.30 to 203.39; documentation regarding sample distribution.	140	46,716.67	6,540,334	0.08 (5 minutes)	523,227
Total			6,857,094		575,492

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of Agency data, since our last request for OMB approval, we have adjusted our estimate of 1 burden to reflect an increase of 6,492,354 responses and 516,028 hours annually. The estimates in table 1 (a decrease of 19,700 responses and 4,928 hours since the last OMB approval) reflect an assessment of the volume of loss/theft/falsification reports received by the Agency under § 203.37 over the past 18 months. While the requirements have not changed, we believe this more accurately reflects the number of reports estimated to be submitted to FDA under this section. Our adjustments to table 2 are attributable to a more accurate reflection of the number of drug sample requests received by manufacturers and authorized distributors of record. The PDMA does not require manufacturers and distributors to report the number of drug sample requests they receive to FDA. However, section 6004 of the Patient Protection and Affordable Care Act (Pub. L. 111–148) requires that manufacturers and authorized distributors submit to FDA annually the identity and quantity of drug samples requested, among other information.

Dated: January 16, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–01079 Filed 1–19–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0008]

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting—TriClip G4 System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) announces a forthcoming public advisory committee meeting of the Circulatory System Devices Panel of the Medical Devices Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public.

DATES: The meeting will take place virtually on February 13, 2024, from 9 a.m. to 6 p.m. Eastern Time.

ADDRESSES: All meeting participants will be heard, viewed, captioned, and recorded for this advisory committee meeting via an online teleconferencing and/or video conferencing platform. Answers to commonly asked questions, including information regarding special accommodations due to a disability, may be accessed at: *https://www.fda.gov/advisory-committees/about-advisory-committees/common-questions-and-answers-about-fda-advisory-committee-meetings.*

FOR FURTHER INFORMATION CONTACT: Akinola Awojope, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg., 66, Rm. 5214, Silver Spring, MD 20993–0002, *Akinola.Awojope@fda.hhs.gov,* 301–636–0512, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last-minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. On February 13, 2024, the committee will discuss, make recommendations, and vote on information regarding the premarket approval application (PMA) for the TriClip G4 System by Abbott Medical. The proposed Indication for Use statement is as follows: The TriClip G4 System is indicated for the improvement of health status in patients with symptomatic severe tricuspid regurgitation despite being treated optimally with medical therapy, who are at intermediate or greater risk for surgery and in whom tricuspid valve edge-to-edge repair is appropriate as determined by a heart team.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material and the link to the online teleconference meeting room will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down and select the appropriate advisory committee meeting link. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before February 2, 2024. Oral presentations from the public will be scheduled on February 13, 2024, between approximately 1 p.m. and 2 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person (see **FOR FURTHER INFORMATION CONTACT**). The notification should include a brief statement of the general nature of the evidence or arguments

they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before January 25, 2024. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by January 29, 2024.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact AnnMarie Williams at *AnnMarie.Williams@fda.hhs.gov* or 240–507–6496 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2). This meeting notice also serves as notice that, pursuant to 21 CFR 10.19, the requirements in 21 CFR 14.22(b), (f), and (g) relating to the location of advisory committee meetings are hereby waived to allow for this meeting to take place using an online meeting platform. This waiver is in the interest of allowing greater transparency and opportunities for public participation, in addition to convenience for advisory committee members, speakers, and guest speakers. The conditions for issuance of a waiver under 21 CFR 10.19 are met.

Dated: January 16, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–01082 Filed 1–19–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Translating Research to Practice to End the Overdose Crisis.

Date: February 14–15, 2024.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892.

Contact Person: Sheila Pirooznia, Ph.D., Scientific Review Officer, Division of Extramural Review, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 496–9350, *sheila.pirooznia@nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIDA–K Alternate SEP.

Date: February 21, 2024.

Time: 12:00 p.m. to 1:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892.

Contact Person: Marisa Srivareerat, Ph.D., Scientific Review Officer, Scientific Review Branch, Office of Extramural Policy, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 435–1258, *marisa.srivareerat@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: January 16, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–01048 Filed 1–19–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Development of Software for Data Science in Infectious and Immune-Mediated Diseases Research (U01 Clinical Trial Not Allowed).

Date: March 6–7, 2024.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G42, Rockville, MD 20892 (Video Assisted Meeting).

Contact Person: Sandip Bhattacharyya, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G42, Rockville, MD 20852, *sandip.bhattacharyya@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 17, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–01131 Filed 1–19–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, Mechanisms of Fusion-Driven Oncogenesis in Childhood Cancers and Next Generation Chemistry Centers for Fusion Oncoproteins, March 29, 2024, 09:00 a.m. to March 29, 2024, 05:00 p.m., National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W260, Rockville, Maryland, 20850 which was published in the **Federal Register** on December 20, 2023, FR Doc 2023–27963, 88 FR 88100.

This notice is being amended to change the meeting date from March 29, 2024 to March 27, 2024. The meeting time and location will remain the same. The meeting is closed to the public.

Dated: January 16, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–01075 Filed 1–19–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; CNS Mechanisms Linking Exercise Training with Energy Balance and Metabolism (P01).

Date: March 27, 2024.

Time: 1:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDDK, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Paul A. Rushing, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7345, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 16, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–01046 Filed 1–19–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders A Study Section.

Date: February 20, 2024.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Menger Hotel, 204 Alamo Plaza, San Antonio, TX 78205.

Contact Person: Natalia Strunnikova, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Rockville, MD 20852, 301–402–0288, *natalia.strunnikova@nih.gov.*

Name of Committee: Neurological Sciences Training Initial Review Group; NST–4 Study Section (NST).

Date: February 21, 2024.

Time: 9:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Steven G. Britt, MD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Rockville, MD 20852, 301–480–1953, *steve.britt@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders B Study Section (NSD–B).

Date: February 22, 2024.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Menger Hotel, 204 Alamo Plaza, San Antonio, TX 78205.

Contact Person: Joel A. Saydoff, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Rockville, MD 20852, 301–496–9223, *joel.saydoff@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: January 17, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–01128 Filed 1–19–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HHS–NIH–CDC–SBIR PHS 2024–1 Phase I/II: Multiplexed Patient

Administered Diagnostics for Hepatitis B, Hepatitis C, and HIV (Topic 127).

Date: February 15–16, 2024.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Video Assisted Meeting).

Contact Person: Stephen A. Gallo, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, MSC 9834, Rockville, MD 20852, (240) 669–2858, *steve.gallo@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 16, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–01045 Filed 1–19–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; PK/PD of mTOR Inhibitors in Aging.

Date: March 5, 2024.

Time: 12:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mariel Jais, PharmD, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Gateway Bldg., Suite 2E400, Bethesda, MD 20892, (301) 594–2614, *mariel.jais@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 16, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–01047 Filed 1–19–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; BRAIN Initiative: Reagent Resources for Brain Cell Type-Specific Access and Manipulation to Broaden Distribution of Enabling Technologies for Neuroscience (U24 Clinical Trial Not Allowed).

Date: February 20, 2024.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Evon Abisaid, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Boulevard, Rockville, MD 20852, (301) 827–0399, *ereifejes@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Instrumentation Program (S10 Clinical Trial Not Allowed).

Date: February 26, 2024.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Evon Abisaid, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Boulevard, Rockville, MD 20852, (301) 827–0399, *ereifejes@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: January 17, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–01130 Filed 1–19–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Dental and Craniofacial Research Special Emphasis Panel Developing Salivary Components as Therapeutics for Oral Health, March 7, 2024, 12:30 p.m. to March 7, 2024, 5 p.m., National Institute of Dental and Craniofacial Research, 6701 Democracy Blvd., Bethesda, MD 20817 which was published in the **Federal Register** on December 18, 2023, FR Doc. 2023–27744, 88 FR 87444.

The meeting time has changed from 12:30 p.m. to 5 p.m. to 10:30 a.m. to 5 p.m. The date of the meeting and the location remain the same. The meeting is closed to the public.

Dated: January 17, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–01129 Filed 1–19–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Small Business Innovation Research (SBIR) Phase II Program Contract Solicitation (PHS 2022–1) Topic 112—Digital Tools Against Misinformation about Infectious Disease Treatments and Vaccines (N01).

Date: February 14, 2024.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F30, Rockville, MD 20892 (Video Assisted Meeting).

Contact Person: Scott Jakes, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F30, Rockville, MD 20852, (240) 669–5931, *jakesse@mail.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HHS–NIH–CDC–SBIR PHS 2024–1 Phase I: Development of Bacteriophage for Treatment of Mycobacterial Infections (Topic 131).

Date: February 21, 2024.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F30, Rockville, MD 20892 (Video Assisted Meeting).

Contact Person: Scott Jakes, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F30, Rockville, MD 20852, (240) 669–5931, *jakesse@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 16, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–01073 Filed 1–19–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Gait as developmental AD marker.

Date: March 1, 2024.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maurizio Grimaldi, M.D., Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Gateway Bldg., Suite 2C218, Bethesda, MD 20892, 301–496–9374, *grimaldim2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 16, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–01051 Filed 1–19–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0002; Internal Agency Docket No. FEMA–B–2405]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer

of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Arizona: Yavapai. ..	Unincorporated Areas of Yavapai County (23–09–1052P).	The Honorable James Gregory, Chair, Board of Supervisors, Yavapai County, 1015 Fair Street, 3rd Floor, Prescott, AZ 86305.	Yavapai County, Flood Control District, 1120 Commerce Drive, Prescott, AZ 86305.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 6, 2024	040093
California:						
Monterey	City of Gonzales (23–09–1221P).	The Honorable Jose L. Rios, Mayor, City of Gonzales, P.O. Box 647, Gonzales, CA 93926.	City Hall, 147 4th Street, Gonzales, CA 93926.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 26, 2024	060198
Monterey	City of Salinas (23–09–1219P).	The Honorable Kimbley Craig, Mayor, City of Salinas, 200 Lincoln Avenue, Salinas, CA 93901.	Permit Center, 65 West Alisal Street, Salinas, CA 93901.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 25, 2024	060202
Monterey	Unincorporated Areas of Monterey County (23–09–1219P).	The Honorable Luis A. Alejo, Chair, Board of Supervisors, Monterey County, 168 West Alisal Street, 2nd Floor, Salinas, CA 93901.	Monterey County, Water Resources Agency, 1441 Schilling Place, North Building, Salinas, CA 93901.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 25, 2024	060195
Monterey	Unincorporated Areas of Monterey County (23–09–1220P).	The Honorable Luis A. Alejo, Chair, Board of Supervisors, Monterey County, 168 West Alisal Street, 2nd Floor, Salinas, CA 93901.	Monterey County, Water Resources Agency, 1441 Schilling Place, North Building, Salinas, CA 93901.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 25, 2024	060195
Monterey	Unincorporated Areas of Monterey County (23–09–1222P).	The Honorable Luis A. Alejo, Chair, Board of Supervisors, Monterey County, 168 West Alisal Street, 2nd Floor, Salinas, CA 93901.	Monterey County, Water Resources Agency, 1441 Schilling Place, North Building, Salinas, CA 93901.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 25, 2024	060195
Monterey	Unincorporated Areas of Monterey County (23–09–1223P).	The Honorable Luis A. Alejo, Chair, Board of Supervisors, Monterey County, 168 West Alisal Street, 2nd Floor, Salinas, CA 93901.	Monterey County, Water Resources Agency, 1441 Schilling Place, North Building, Salinas, CA 93901.	*https://msc.fema.gov/portal/advanceSearch.*	May 6, 2024	060195
Tulare	City of Woodlake (23–09–1050P).	The Honorable Rudy Mendoza, Mayor, City of Woodlake, 350 North Valencia Boulevard, Woodlake, CA 93286.	City Hall, 350 North Valencia Boulevard, Woodlake, CA 93286.	*https://msc.fema.gov/portal/advanceSearch.*	May 2, 2024	065071
Tulare	Unincorporated Areas of Tulare County (23–09–1050P).	The Honorable Dennis Townsend, Chair, Board of Supervisors, Tulare County, 2800 West Burrel Avenue, Visalia, CA 93291.	Tulare County, Resource Management Agency, Government Plaza, 5961 South Mooney Boulevard, Visalia, CA 93277.	*https://msc.fema.gov/portal/advanceSearch.*	May 2, 2024	065066
Ventura	City of Simi Valley (22–09–1262P).	The Honorable Fred D. Thomas, Mayor, City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, CA 93063.	Department of Public Works, 2929 Tapo Canyon Road, Simi Valley, CA 93063.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 12, 2024	060421
Florida:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Clay	Unincorporated Areas of Clay County (23–04–0807P).	Howard Wanamaker, Manager, Clay County, P.O. Box 1366, Green Cove Springs, FL 32043.	Clay County, Public Works Department, 5 Esplanade Avenue, Green Cove Springs, FL 32043.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 21, 2024	120064
Duval	City of Atlantic Beach (22–04–5573P).	The Honorable Curtis Ford, Mayor—Seat 1, City of Atlantic Beach, 800 Seminole Road, Atlantic Beach, FL 32233.	City Hall, 800 Seminole Road, Atlantic Beach, FL 32233.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 5, 2024	120075
Duval	City of Jacksonville (22–04–5573P).	The Honorable Donna Deegan, Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, FL 32202.	Edward Ball Building Development Services, Room 2100, 214 North Hogan Street, Jacksonville, FL 32250.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 5, 2024	120077
Duval	City of Jacksonville (23–04–1662P).	The Honorable Donna Deegan, Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, FL 32202.	Edward Ball Building Development Services, Room 2100, 214 North Hogan Street, Jacksonville, FL 32250.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 12, 2024	120077
Duval	City of Jacksonville (23–04–3193P).	The Honorable Donna Deegan, Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, FL 32202.	Edward Ball Building Development Services, Room 2100, 214 North Hogan Street, Jacksonville, FL 32250.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 2, 2024	120077
Nassau	Unincorporated Areas of Nassau County (23–04–1810P).	Klynt A. Farmer, Chair, Nassau County, Board of Commissioners, 96135 Nassau Place, Suite 1, Yulee, FL 32097.	Nassau County Building Department, 96161 Nassau Place, Yulee, FL 32097.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 31, 2024	120170
St. Johns	Unincorporated Areas of St. Johns County (22–04–4973P).	Christian Whitehurst, Chair, St. Johns County, Board of Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Permit Center, 4040 Lewis Speedway, St. Augustine, FL 32084.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 29, 2024	125147
Idaho:						
Ada	Unincorporated Areas of Ada County (23–10–0153P).	Rod Beck, Chair, Ada County Board of Commissioners, Ada County Courthouse, 200 West Front Street, 3rd Floor, Boise, ID 83702.	Ada County Courthouse, 200 West Front Street, Boise, ID 83702.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 11, 2024	160001
Bannock	City of Pocatello (22–10–0761P).	The Honorable Brian Blad, Mayor, City of Pocatello, P.O. Box 4169, Pocatello, ID 83201.	City Hall, 911 North 7th Avenue, Pocatello, ID 83201.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 21, 2024	160012
Bannock	Unincorporated Areas of Bannock County (22–10–0761P).	Ernie Moser, Chair, Bannock County, Board of Commissioners, 624 East Center, Room 101, Pocatello, ID 83201.	Bannock County, Planning and Development, 5500 South 5th Avenue, Pocatello, ID 83201.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 21, 2024	160009
Canyon	City of Notus (23–10–0461P).	The Honorable David Porterfield, Mayor, City of Notus, P.O. Box 257, Notus, ID 83656.	City Hall, 375 Notus Road, Notus, ID 83656.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 20, 2024	160147
Canyon	Unincorporated Areas of Canyon County (23–10–0461P).	Brad Holton, Chair, Canyon County, Board of Commissioners, 1115 Albany Street, Room 101, Caldwell, ID 83605.	Canyon County Administration Building, 111 North 11th Avenue, Room 101, Caldwell, ID 83605.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 20, 2024	160208
Illinois:						
Kane	City of Elgin (22–05–2657P).	The Honorable David Kaptain, Mayor, City of Elgin, 150 Dexter Court, Elgin, IL 60120.	Public Works Department, Engineering Department, 150 Dexter Court, Elgin, IL 60120.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 4, 2024	170087
Kane	Village of Campton Hills (22–05–2657P).	Barbara Wojnicki, Village President, Village of Campton Hills, 40W270 LaFox Road, Suite B, Campton Hills, IL 60175.	Village Hall, 40W270 LaFox Road, Suite B, Campton Hills, IL 60175.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 4, 2024	171396
Will	Unincorporated Areas of Will County (22–05–3276P).	Jennifer Bertino-Tarrant, Will County Executive, Will County Office Building, 302 North Chicago Street, Joliet, IL 60432.	Will County Land Use Department, 58 East Clinton Street, Suite 100, Joliet, IL 60432.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 17, 2024	170695

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Will	Unincorporated Areas of Will County (24–05–0310P).	Jennifer Bertino-Tarrant, Will County Executive, Will County Office Building, 302 North Chicago Street, Joliet, IL 60432.	Will County Land Use Department, 58 East Clinton Street, Suite 100, Joliet, IL 60432.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 15, 2024	170695
Will	Village of Plainfield (24–05–0310P).	John Argoudelis, Village President, Village of Plainfield, 24401 West Lockport Street, Plainfield, IL 60544.	Village Hall, 24401 West Lockport Street, Plainfield, IL 60544.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 15, 2024	170771
Indiana: Marion.	City of Indianapolis (22–05–2392P).	The Honorable Joe Hogsett, Mayor, City of Indianapolis, City-County Building, 200 East Washington Street, Suite 2501, Indianapolis, IN 46204.	City Hall, 200 East Washington Street, Suite 1842, Indianapolis, IN 46204.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 20, 2024	180159
Michigan: Saginaw	Township of Kochville (23–05–1059P).	Alan Maleskey, Town Supervisor, Township of Kochville, Kochville Township Offices, 5851 Mackinaw Road, Saginaw, MI 48604.	Township Hall, 5851 Mackinaw Road, Saginaw, MI 48604.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 20, 2024	260501
Minnesota:						
Dakota	City of Hampton (23–05–1190P).	The Honorable John Knetter, Mayor, City of Hampton, P.O. Box 128, Hampton, MN 55031.	City Hall, 5265 238 Street East, Hampton, MN 55031.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 26, 2024	270774
Dakota	Unincorporated Areas of Dakota County (23–05–1190P).	Matt Smith, County Manager, Dakota County, 1590 Highway 55, Hastings, MN 55033.	Dakota County Administration Center, 1590 Highway 55, Hastings, MN 55033.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 26, 2024	270101
Nevada: Carson City.	City of Carson City (22–09–0582P).	The Honorable Lori Bagwell, Mayor, City of Carson City, City Hall, 201 North Carson Street, Suite 2, Carson City, NV 89701.	Building Division Permit Center, 108 East Proctor Street, Carson City, NV 89701.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 4, 2024	320001
New York: Rockland.	Town of Clarkstown (23–02–0495P).	George Hoehmann, Supervisor, Town of Clarkstown, 10 Maple Avenue, New City, NY 10956.	Town Hall, 10 Maple Avenue, New City, NY 10956.	*https://msc.fema.gov/portal/advanceSearch.*	May 22, 2024	360679
Ohio:						
Licking	Village of Hebron (23–05–2363P).	The Honorable James Layton, Mayor, Village of Hebron, 934 West Main Street, Hebron, OH 43025.	Municipal Complex, 934 West Main Street, Hebron, OH 43025.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 12, 2024	390333
Licking	Unincorporated Area of Licking County (23–05–2363P).	Timothy E. Bubb, President, Board of Licking County Commissioners, 20 South 2nd Street, Newark, OH 43055.	Licking County Planning and Development Department, 20 South 2nd Street, Newark, OH 43055.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 12, 2024	390328
Logan	City of Bellefontaine (23–05–2635P).	The Honorable Ben Stahler, Mayor, City of Bellefontaine, 135 North Detroit Street, Bellefontaine, OH 43311.	City Hall, 135 North Detroit Street, Bellefontaine, OH 43311.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 17, 2024	390340
Logan	Unincorporated Areas of Logan County (23–05–2635P).	The Honorable Joe Antram, President, Logan County Board of Commissioners, 117 East Columbus Avenue, Bellefontaine, OH 43311.	Logan County Commissioner's Office, 117 East Columbus Avenue, Bellefontaine, OH 43311.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 17, 2024	390772
Wisconsin:						
Kenosha	City of Kenosha (23–05–2935P).	The Honorable John Antaramian, Mayor, City of Kenosha, 625 52nd Street, Room 300, Kenosha, WI 53140.	City Hall, 625 52nd Street, Kenosha, WI 53140.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 24, 2024	550209
Kenosha	Village of Bristol (23–05–2935P).	Mike Farrell, President, Village of Bristol, Bristol Municipal Building, 19801 83rd Street, Bristol, WI 53104.	Village Hall, 19801 83rd Street, Bristol, WI 53104.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 24, 2024	550595

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Kenosha	Village of Pleasant Prairie (23–05–0948P).	John P. Steinbrink, President, Village of Pleasant Prairie, 9915 39th Avenue, Pleasant Prairie, WI 53158.	Village Hall, 9915 39th Avenue, Pleasant Prairie, WI 53158.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 26, 2024	550613
Outagamie	Unincorporated Areas of Outagamie County (21–05–4195P).	Thomas M. Nelson, County Executive, Outagamie County, 320 South Walnut Street, Appleton, WI 54911.	Outagamie County Building, 410 South Walnut Street, Appleton, WI 54911.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 19, 2024	550302
Sheboygan	City of Plymouth (22–05–1328P).	The Honorable Don Pohlman, Mayor, City of Plymouth, City Hall, 128 Smith Street, Plymouth, WI 53073.	City Hall, 128 Smith Street, Plymouth, WI 53073.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 8, 2024	550428
Sheboygan	Unincorporated Areas of Sheboygan County (22–05–1328P).	Vernon C. Koch, Chair, Sheboygan County, Administration Building, 508 New York Avenue, Room 311, Sheboygan, WI 53081.	Sheboygan County Administration Building, 508 New York Avenue, Sheboygan, WI 53081.	*https://msc.fema.gov/portal/advance.*	Apr. 8, 2024	550424

[FR Doc. 2024–01103 Filed 1–19–24; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.gov*.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65. The currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov*.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Alabama: Autauga (FEMA Docket No.: B–2391).	City of Prattville (23–04–1024P).	The Honorable Bill Gillespie, Jr., Mayor, City of Prattville, 101 West Main Street, Prattville, AL 36067.	City Hall, 102 West Main Street, Prattville, AL 36067.	Dec. 26, 2023	010002
Arkansas:					
Benton (FEMA Docket No.: B–2382).	City of Bentonville (22–06–2867P).	The Honorable Stephanie Orman, Mayor, City of Bentonville, 305 Southwest A Street, Bentonville, AR 72712.	Public Works Department, 3200 Southwest, Municipal Drive, Bentonville, AR 72712.	Dec. 29, 2023	050012
Benton (FEMA Docket No.: B–2382).	City of Centerton (22–06–2867P).	The Honorable Bill Edwards, Mayor, City of Centerton, 200 Municipal Drive, Centerton, AR 72719.	Planning and Development Department, 200 Municipal Drive, Centerton, AR 72719.	Dec. 29, 2023	050399
Colorado:					
Adams (FEMA Docket No.: B–2391).	City of Aurora (22–08–0792P).	The Honorable Mike Coffman, Mayor, City of Aurora, 15151 East Alameda Parkway, Aurora, CO 80012.	Public Works Department, 15151 East Alameda, Parkway, Suite 3200, Aurora, CO 80012.	Dec. 15, 2023	080002
Adams (FEMA Docket No.: B–2386).	City of Northglenn (22–08–0711P).	The Honorable Meredith Leighty, Mayor, City of Northglenn, 11701 Community Center Drive, Northglenn, CO 80233.	City Hall 11701 Community Center Drive, Northglenn, CO 80233.	Dec. 15, 2023	080257
Adams (FEMA Docket No.: B–2391).	Unincorporated areas of Adams County (22–08–0792P).	Steve O'Dorisio Chair, Adams County, Board of Commissioners, 4430 South Adams County Parkway, Brighton, CO 80601.	Adams County Community and Economic Development, 4430 South Adams County Parkway, Brighton, CO 80601.	Dec. 15, 2023	080001
Boulder (FEMA Docket No.: B–2382).	City of Boulder (22–08–0838P).	The Honorable Aaron Brockett, Mayor, City of Boulder, 1777 Broadway Street, Boulder, CO 80302.	Municipal Building, 1777 Broadway Street, Boulder, CO 80302.	Dec. 18, 2023	080024
Broomfield (FEMA Docket No.: B–2376).	City and County of Broomfield (22–08–0513P).	The Honorable Guyleen Castriotta, Mayor, City and County of Broomfield, 1 DesCombes Drive Broomfield, CO 80020.	Engineering Department, 1 DesCombes Drive, Broomfield, CO 80020.	Jan. 2, 2024	085073
Pueblo (FEMA Docket No.: B–2386).	City of Pueblo (22–08–0523P).	The Honorable Nicholas A. Gradisar, Mayor, City of Pueblo, 1 City Hall Place, Pueblo, CO 81003.	Public Works Department, 211 East D Street, Pueblo, CO 81003.	Dec. 21, 2023	085077
Delaware: New Castle (FEMA Docket No.: B–2376).	Unincorporated areas of New Castle County (23–03–0218P).	Matthew Meyer, New Castle County Executive, 87 Reads Way, New Castle, DE 19720.	New Castle County Land Use Department, 87 Reads Way, New Castle, DE 19720.	Dec. 28, 2023	105085
Florida:					
Duval (FEMA Docket No.: B–2391).	City of Jacksonville (23–04–1483P).	The Honorable Donna Deegan, Mayor, City of Jacksonville, 117 West Duval Street, Jacksonville, FL 32202.	City Hall 117 West Duval Street, Suite 400 Jacksonville, FL 32202.	Dec. 21, 2023	120077
Hillsborough (FEMA Docket No.: B–2382).	Unincorporated areas of Hillsborough County (23–04–2315P).	Bonnie Wise Hillsborough County Administrator, 601 East Kennedy, Boulevard, 26th Floor, Tampa, FL 33602.	Hillsborough County Center, 601 East Kennedy Boulevard, 22nd Floor, Tampa, FL 33602.	Jan. 18, 2024	120112
Hillsborough (FEMA Docket No.: B–2382).	Unincorporated areas of Hillsborough County (23–04–2913P).	Bonnie Wise Hillsborough County Administrator, 601 East Kennedy, Boulevard, 26th Floor, Tampa, FL 33602.	Hillsborough County Center 601 East Kennedy Boulevard, 22nd Floor Tampa, FL 33602.	Jan. 18, 2024	120112
Monroe (FEMA Docket No.: B–2382).	Unincorporated areas of Monroe County (23–04–4347P).	The Honorable Craig Cates, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas, Highway, Suite 300, Marathon, FL 33050.	Dec. 15, 2023	125129
Monroe (FEMA Docket No.: B–2386).	Unincorporated areas of Monroe County (23–04–4348P).	The Honorable Craig Cates, Mayor, Monroe County Board of Commissioners 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300 Marathon, FL 33050.	Dec. 18, 2023	125129
Orange (FEMA Docket No.: B–2382).	City of Orlando (23–04–1723P).	The Honorable Buddy Dyer Mayor, City of Orlando, 400 South Orange Avenue, Orlando, FL 32801.	Public Works Department, Engineering Division, 400 South Orange Avenue, 8th Floor Orlando, FL 32801.	Dec. 18, 2023	120186
Osceola (FEMA Docket No.: B–2382).	City of St. Cloud (22–04–4332P).	Veronica Miller Manager, City of St., Cloud 1300 9th Street, St. Cloud, FL 34769.	Building Department Building A, 1300 9th Street St., Cloud, FL 34769.	Dec. 20, 2023	120191
Pasco (FEMA Docket No.: B–2376).	Unincorporated areas of Pasco County (23–04–2692P).	Jack Mariano Chair, Pasco County Board of Commissioners, 8731 Citizens Drive, New Port Richey, FL 34654.	Pasco County Building Construction Services Department, 8731 Citizens Drive, Suite 230 New Port Richey, FL 34654.	Dec. 28, 2023	120230
Sarasota (FEMA Docket No.: B–2386).	City of Sarasota (23–04–2352P).	The Honorable Kyle Scott Battie Mayor, City of Sarasota, 1565 1st Street, Room 101, Sarasota, FL 34236.	Development Service Department, 1565 1st Street, Room 101, Sarasota, FL 34236.	Dec. 26, 2023	125150
Sarasota (FEMA Docket No.: B–2382)	Unincorporated areas of Sarasota County (23–04–0451P).	Ron Cutsinger Chair, Sarasota County Board of Commissioners 1660 Ringling Boulevard Sarasota, FL 34236.	Sarasota County Planning and Development Services Department, 1001 Sarasota Center Boulevard, Sarasota, FL 34240.	Dec. 14, 2023	125144
Sumter (FEMA Docket No.: B–2382).	City of Wildwood (23–04–2289P).	The Honorable Ed Wolf Mayor, City of Wildwood, 100 North Main Street, Wildwood, FL 34785.	City Hall, 100 North Main Street, Wildwood, FL 34785.	Dec. 22, 2023	120299

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Sumter (FEMA Docket No.: B–2382).	Unincorporated areas of Sumter County (23–04–2289P).	Craig A. Estep Chair, Sumter County Board of Commissioners, 7375 Powell Road Wildwood, FL 34785.	Sumter County Administration, 7375 Powell Road Wildwood, FL 34785.	Dec. 22, 2023	120296
Louisiana: Ascension (FEMA Docket No.: B–2386).	Unincorporated areas of Ascension Parish (23–06–0391P).	The Honorable Clint Cointment Ascension Parish President, 615 East Worthey Street, Gonzales, LA 70737.	Ascension Parish Government Complex, 615 East Worthey Street, Gonzales, LA 70737.	Dec. 22, 2023	220013
Maryland: Frederick (FEMA Docket No.: B–2382).	Unincorporated areas of Frederick County (23-03-0887P).	Jessica Fitzwater Frederick County, Executive 12 East Church Street, Frederick, MD 21701.	Frederick County Division of Planning and Permitting, 30 North Market Street, Frederick, MD 21701.	Dec. 27, 2023	240027
Massachusetts: Essex (FEMA Docket No.: B–2386).	City of Gloucester (23–01–0351P).	The Honorable Greg Varga Mayor, City of Gloucester, 9 Dale Avenue Gloucester, MA 01930.	City Hall 3 Pond Road, 2nd Floor Gloucester, MA 01930.	Dec. 18, 2023	250082
North Carolina: Rowan (FEMA Docket No.: B–2386).	Town of Granite Quarry (22–04–4689P).	The Honorable Brittany Barnhardt Mayor, Town of Granite Quarry, 143 North Salisbury Avenue, Granite Quarry, NC 28146.	Town Hall, 143 North Salisbury Avenue, Granite Quarry, NC 28146.	Jan. 3, 2024	370212
Tennessee: Williamson (FEMA Docket No.: B–2386).	Unincorporated areas of Williamson County (22–04–3168P).	The Honorable Rogers Anderson Mayor, Williamson County, 1320 West Main Street, Suite 125, Franklin, TN 37064.	Williamson County Planning and Zoning Department, 1320 West Main Street, Suite 400 Franklin, TN 37064.	Dec. 29, 2023	470204
Texas:					
Caldwell (FEMA Docket No.: B–2376).	Unincorporated areas of Caldwell County (22–06–2389P).	The Honorable Hoppy Haden Caldwell County Judge, 110 South Main Street, Room 101, Lockhart, TX 78644.	Caldwell County Main Historic Courthouse, 110 South Main Street, Room 201 Lockhart, TX 78644.	Dec. 22, 2023	480094
Collin (FEMA Docket No.: B–2376).	City of Celina (23–06–0639P).	The Honorable Ryan Tubbs Mayor, City of Celina, 142 North Ohio Street, Celina, TX 75009.	City Hall, 142 North Ohio Street, Celina, TX 75009.	Jan. 2, 2024	480133
Johnson (FEMA Docket No.: B–2382).	City of Godley (23-06-0207P).	The Honorable Acy Mcgehee Mayor, City of Godley, 200 West Railroad Street, Godley, TX 76044.	City Hall, 104 South Main Street, Godley, TX 76044.	Jan. 2, 2024	480880
Kaufman (FEMA Docket No.: B–2382).	City of Forney (23-06-0547P).	Charles W. Daniels, City of Forney Manager, P.O. Box 826 Forney, TX 75126.	City Hall, 101 East Main Street, Forney, TX 75126.	Dec. 15, 2023	480410
Kaufman (FEMA Docket No.: B–2382).	Unincorporated areas of Kaufman County (23-06-0547P).	The Honorable Jakie Allen, Kaufman County Judge, 1902 East U.S. Highway 175, Kaufman, TX 75142.	Kaufman County Development Services Department, 106 West Grove Street, Kaufman, TX 75142.	Dec. 15, 2023	480411
Rockwall (FEMA Docket No.: B–2386).	City of Fate (23–06–0839P).	The Honorable David Billings Mayor, City of Fate, 1900 C.D. Boren Parkway Fate, TX 75087.	City Hall, 1900 C.D. Boren Parkway, Fate, TX 75087.	Dec. 18, 2023	480544
Travis (FEMA Docket No.: B–2382).	City of Pflugerville (23-06-0568P).	The Honorable Victor Gonzales Mayor, City of Pflugerville, P.O. Box 589, Pflugerville, TX 78691.	Planning and Development Services Department, 100 West Main Street, Pflugerville, TX 78691.	Dec. 18, 2023	481028
Webb (FEMA Docket No.: B–2391).	Unincorporated areas of Webb County (23–06–0352P).	The Honorable Tano E. Tijerina Webb County Judge, 1000 Houston Street, 3rd Floor Laredo, TX 78040.	Webb County Planning Department, 1110 Washington Street, Suite 302 Laredo, TX 78040.	Dec. 21, 2023	481059
Utah: Salt Lake (FEMA Docket No.: B–2376).	City of Murray (22–08–0780P).	The Honorable Brett A. Hales Mayor, City of Murray, 10 East 4800 South, 3rd Floor Murray, UT 84107.	Geographic Information Systems Division, 10 East 4800, South Murray, UT 84107.	Dec. 14, 2023	490103

[FR Doc. 2024–01104 Filed 1–19–24; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2023–0035]

Privacy Act of 1974 Matching Program

AGENCY: Department of Homeland Security, Federal Emergency Management Agency

ACTION: Notice of a new matching program.

SUMMARY: The Department of Homeland Security, Federal Emergency Management Agency (FEMA) and the United States Small Business Administration (SBA), pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act may not provide duplicative disaster assistance to individuals, businesses, including Private-Not-for Profits (PNPs), or other entities for the same disaster or emergency losses. DHS/FEMA and SBA will participate in a Computer Matching program to share federal records regarding financial/benefits award decisions of individuals, businesses, and/or other entities to verify eligibility for benefits, prevent duplicative aid from being provided in response to the same disaster or emergency, and recover aid when duplication of benefits is identified. This proposed Agreement re-establishes the Computer Matching program between DHS/FEMA and SBA that is set to expire on March 2, 2024.

DATES: This Agreement will take effect 30 days from the date copies of this signed Agreement are sent to both Houses of Congress and OMB, or thirty (30) days from the date the Computer Matching Notice is published in the **Federal Register** for public comment, at which time comments will be addressed. Additionally, depending on whether comments are received, this Agreement could yield a contrary determination (Commencement Date). DHS/FEMA is the agency that will: 1. Transmit this Agreement to Congress; 2. Notify OMB; 3. Publish the Computer Matching Notice in the **Federal Register**; and 4. Address public comments that may result from publication in the **Federal Register**.

ADDRESSES: You may submit comments on this proposed matching program, identified by docket number DHS–

2023–0035 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Mason Clutter, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655 or Sheri McConville, Director (Acting), Office of Performance and Systems Management, Office of Capital Access, U.S. Small Business Administration, 409 3rd Street SW, Washington, DC 20416.

Instructions: All submissions received must include the agency name and docket number DHS–2023–0035. 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: To obtain additional information about this matching program and the contents of this Computer Matching Agreement between DHS–FEMA and SBA, please view this Computer Matching Agreement at the following website: *https://www.dhs.gov/publication/computer-matching-agreements-and-notices.* For general questions about this matching program, contact Mason Clutter, (202) 343–1717, DHS Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528–0655. For additional information from FEMA, contact Russell Bard (202–766–0582), Chief Privacy Officer, FEMA Privacy Branch, and Maile Arthur (202–577–6333), Deputy Director, Information Management Division, Federal Emergency Management Agency, Department of Homeland Security; and inquiries related to the Small Business Administration: Sheri McConville, Director (Acting), Office of Performance and Systems Management at (202) 401–4281 or *SheriMcConville@sba,gov,* Kelvin Moore, Chief Information Security Officer, Office of the Chief Information Officer at (202–921–6273) or *kelvin.moore@sba.gov.* For SBA privacy related inquiries LaWanda Burnette, Chief Privacy Officer, Office of the Chief Information Officer, Small Business Administration at (202–853–0851) or *lawanda.burnette@sba.gov.*

SUPPLEMENTARY INFORMATION: The Agreement between SBA and DHS/FEMA is expected to aid in the reduction of Duplication of Benefits (DOB) payments to survivors of major disaster declarations. This will be accomplished by matching specific FEMA disaster applicant data with SBA disaster loan application and decision data for a declared disaster, as set forth in the Agreement. Prior to the use of this computer match, SBA loan officers used stand-alone Personal Computers to access FEMA's computer system, National Emergency Management Information System-Individual Assistance (NEMIS–IA) and matched records manually. SBA and DHS/FEMA are dual source and recipient agencies in this matching program. DHS/FEMA provides this notice in accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503) and the Computer Matching and Privacy Protection Amendments of 1990 (Pub. L. 101–508) (Privacy Act); Office of Management and Budget (OMB) Final Guidance Interpreting the Provisions of Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988, 54 FR 25818 (June 19, 1989); and OMB Circular A–108, 81 FR 94424 (December 23, 2016). This proposed Agreement re-establishes the Computer Matching program between DHS/FEMA and SBA that is set to expire on March 2, 2024.

The notice for that agreement can be found here in the **Federal Register**: *https://www.govinfo.gov/content/pkg/FR-2021-08-30/pdf/2021-18551.pdf.* Furthermore, that current agreement, and future agreements, can be found on SBA's website: Privacy Act (*sba.gov*) and on DHS's website: Computer Matching Agreements and Notices | Homeland Security (*dhs.gov*).

PARTICIPATING AGENCIES:

DHS/FEMA and SBA.

AUTHORITY FOR CONDUCTING THE MATCHING PROGRAM:

Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93–288), as amended at 42 U.S.C. 5121 *et seq.*

The Debt Collection Improvement Act of 1996, 31 U.S.C. 3325(d) and 7701(c)(1).

Section 121 of the Immigration Reform and Control Act (IRCA) of 1986, Pub. L. 99–603, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. 104–193, 110 Stat. 2168 (1996), requires DHS to establish a system for the verification of immigration status of noncitizen applicants for, or recipients of, certain types of benefits as specified within IRCA, and to make this system available to state agencies that administer such benefits.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104–208, 110 State. 3009 (1996) grants federal, state, or local government agencies seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency with the authority to request such information from DHS–U.S. Citizenship and Immigration Services for any purpose authorized by law.

PURPOSE:

DHS/FEMA and SBA may not provide duplicative disaster assistance to individuals, businesses, including Private-Not-for Profits (PNPs), or other entities for the same disaster or emergency losses. DHS/FEMA and SBA will participate in a Computer Matching program to share federal records related to financial/benefits award decisions of individuals, businesses, and/or other entities to verify eligibility for benefits, prevent duplicative aid from being provided in response to the same disaster or emergency, and recover aid when duplication of benefits is identified.

CATEGORIES OF INDIVIDUALS:

Individuals and households who apply for FEMA disaster assistance following a Presidentially declared major disaster or emergency.

CATEGORIES OF RECORDS:

The three types of match processes, for initial registration, duplication of benefits, and status updates, are described below.

1. DHS/FEMA—SBA Automated Import/Export Process for Initial Registrations:

a. SBA is the recipient (*i.e.,* matching) agency. SBA will match records from its Disaster Loans Case Files system of records (SBA 20), applications and information accessed via the Disaster Lending System, to the records extracted and provided by DHS/FEMA from its DHS/FEMA Disaster Recovery Assistance Files system of records.

b. DHS/FEMA will provide SBA the data elements identified in the current NEMIS–IA Disaster Assistance Improvement Program (DAIP) Interface Control Document (ICD), which includes but is not limited to the following information: Applicant's personally identifiable information (PII), which includes: FEMA Registration ID Number, name, address, social security number, and date of birth; damaged property information; insurance policy data; property occupant data; vehicle registration data; and flood zone and flood insurance data.

c. SBA will conduct the match against the Disaster Loans Case Files system of records (SBA 20) via Disaster Lending System using the FEMA Disaster ID number, FEMA Registration ID number, Product (Home/Business), and Registration Occupant Social Security number (SSN) to create a New Pre-Application. The records SBA receives are of DHS/FEMA applicants who are referred to SBA for disaster loan assistance. Controls on the DHS/FEMA export of data are in place to ensure that SBA only receives unique and valid referral records.

d. When SBA matches its records to those provided by DHS/FEMA, two types of matches are possible: a full match and a partial match. A full match exists when an SBA record matches a DHS/FEMA record on each of the following data fields: FEMA Disaster ID number, FEMA Registration ID number, Product (Home/Business), and Registration Occupant SSN. A partial match exists when an SBA record matches a DHS/FEMA record on one or more, but not all data fields listed above. If an exact (full) match is found among SBA records for the current imported record, the current record is automatically marked as a duplicate by the system with appropriate comments inserted to indicate the corresponding record that matched. If a partial match is found during the import process, the record is routed for manual examination, investigation, and resolution to determine whether it is truly a duplicate record.

2. DHS/FEMA–SBA Duplication of Benefits Automated Match Process:

a. Both DHS/FEMA and SBA will act as the recipient (*i.e.,* matching) agencies. SBA will extract and provide to DHS/FEMA data from its Disaster Loans Case Files system of records and accessed via the Disaster Lending System. DHS/FEMA will match the data SBA provides to records in its Disaster Recovery Assistance Files system of records, accessed through NEMIS–IA System, via the FEMA Registration ID number. SBA will issue a data call to DHS/FEMA requesting that DHS/FEMA return any records for which NEMIS–IA found a match. For each match found, DHS/FEMA sends all applicant information that it collects during the registration process to SBA so that SBA may match these records with its registrant data in the Disaster Lending System. SBA's Disaster Lending System manual process triggers an automated interface to query NEMIS-IA, using the FEMA Registration ID number as the unique identifier.

b. DHS/FEMA will return the following fields for the matching DHS/FEMA record, if any: FEMA Disaster Number; FEMA Registration ID number; applicant and if applicable, co-applicant name; damaged dwelling address; phone number; SSN; damaged property data; insurance policy information; contact address (if different from damaged dwelling address); flood zone and flood insurance data; FEMA Housing Assistance and Other Needs Assistance data; program, award level, eligibility, inspection data; verification of ownership and occupancy; and approval or rejection data. DHS/FEMA will return no result when the FEMA Registration ID number is not matched.

c. For each matching record received from DHS/FEMA, SBA determines whether DHS/FEMA assistance duplicates SBA loan assistance. If SBA loan officers determine that there is a duplication of benefits, the duplicated amount is deducted from the eligible SBA loan amount.

3. DHS/FEMA–SBA Status Update Automated Match Process:

a. DHS/FEMA will act as the recipient (*i.e.,* matching) agency. DHS/FEMA will match records from its Disaster Recovery Assistance Files system of records to the records extracted and provided by SBA from its Disaster Loans Case Files system of records. The purpose of this process is to update DHS/FEMA applicant information with the status of SBA loan determinations. The records provided by SBA will be automatically imported into NEMIS–IA to update the status of existing applicant records. The records DHS/FEMA receives from SBA are of DHS/FEMA applicants who were referred to SBA for disaster loan assistance. Controls on the SBA export of data are in place to ensure that DHS/FEMA only receives unique and valid referral records.

b. SBA will provide to DHS/FEMA information and data, including but not limited to the following: personal information about SBA applicants, including name, damaged dwelling address, and SSN; application data; loss to personal property data; loss mitigation data; SBA loan data; and SBA event data. DHS/FEMA will conduct the match using FEMA Disaster Number and FEMA Registration ID number.

c. Loan data for matched records will be recorded and displayed in NEMIS–IA. Loan data will also be run through NEMIS–IA business rules; potentially duplicative categories of assistance are sent to FEMA's Program Review process for manual evaluation of any duplication of benefits. If FEMA review staff determines that there is a duplication of benefits, the duplicated amount is deducted from the e1igible award. FEMA applicants receive a letter (hardcopy or electronic) that indicates the amount of their eligible award and their ability to appeal.

SYSTEM OF RECORDS:

DHS/FEMA–008 Disaster Recovery Assistance Files (87 FR 7852, February 10, 2022) accesses records from its Disaster Recovery Assistance Files system of records, as provided by the DHS/FEMA—008 SORN, through its NEMIS–IA system, and matches them to the records that SBA provides from its SBA-20 Disaster Loans Case Files, 86 FR 64979 (November 19, 2021) system of records, as amended. SBA 20 Disaster Loans Case Files (86 FR 64979, November 19, 2021) uses its Disaster Lending System to access records from its Disaster Loan Case Files system of records and match them to the records that DHS/FEMA provides from its Disaster Recovery Assistance Files system of records.

Mason C. Clutter,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2024–01057 Filed 1–19–24; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6412–N–01]

Waivers and Alternative Requirements for Community Development Block Grant Disaster Recovery (CDBG–DR) and Community Development Block Grant National Disaster Resilience (CDBG–NDR) Grantees

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice governs Community Development Block Grant disaster recovery (CDBG–DR) and Community Development Block Grant National Disaster Resilience (CDBG–NDR) funds awarded under several appropriations acts identified in the Table of Contents. Specifically, this notice provides waivers and establishes alternative requirements for certain CDBG–DR and CDBG–NDR grantees that have submitted requests for waivers and alternative requirements for grants provided under the public laws cited in this notice.

DATES: *Applicability Date:* January 29, 2024.

FOR FURTHER INFORMATION CONTACT: Tennille Parker, Director, Office of Disaster Recovery, U.S. Department of

Housing and Urban Development, 451 7th Street SW, Room 7282, Washington, DC 20410, telephone number 202–708–3587 (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.* Email inquiries may be sent to *disaster_recovery@hud.gov.*

SUPPLEMENTARY INFORMATION:

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I. Authority To Grant Waivers
II. Public Law 113–2 Waivers and Alternative Requirements
III. Public Law 115–123 Waivers and Alternative Requirements
IV. Public Law 116–20 Waivers and Alternative Requirements
V. Finding of No Significant Impact (FONSI)

I. Authority To Grant Waivers

Each of the appropriations acts cited in the Table of Contents authorize the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary, or use by the recipient, of grant funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment. HUD may also exercise its regulatory waiver authority under 24 CFR 5.110, 91.600, and 570.5.

All waivers and alternative requirements authorized in this notice are based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) (HCDA). The good cause for each waiver and alternative requirement is summarized in this notice.

II. Public Law 113–2 Waivers and Alternative Requirements

II.A. Isle de Jean Charles Waiver and Alternative Requirement for Eligibility and National Objective Compliance and Use of Program Income (State of Louisiana Only)

The **Federal Register** notice published on June 7, 2016 (81 FR 36557) announced the allocation of approximately $1 billion of CDBG–NDR funds appropriated pursuant to Public Law 113–2 for competitive awards through the National Disaster Resilience Competition (NDRC). Through the NDRC, HUD awarded CDBG–NDR funds to 13 states and local governments to implement innovative and replicable activities to increase the resilience of communities to future disasters. HUD awarded $92.6 million in CDBG–NDR funds to the State of Louisiana, including $48.3 million to implement the Isle de Jean Charles (IDJC) Relocation. Additionally, HUD published a **Federal Register** notice on February 19, 2019 (84 FR 4836) that included a clarification of certain actions being taken by the State as part of the relocation of the IDJC community.

The State is using its CDBG–NDR funds to support the voluntary resettlement of current and former residents of the flood-prone Isle de Jean Charles to a new and more resilient inland community (the ''IDJC Resettlement Project''). In 1955, Isle de Jean Charles was a 22,400-acre island. At the time of the CDBG–NDR award, IDJC had lost 98 percent of its land due to subsidence, with only 320 acres remaining. The goals of the IDJC Resettlement Project are to move residents out of harm's way, to engage the Isle de Jean Charles community residents in the design of the new community, to identify means by which the new community can be financially sustainable, and to safeguard the preservation and continuity of IDJC's diverse cultural identities and traditions.

In the **Federal Register** notice published on February 19, 2019, HUD clarified that costs required to restrict the use of land as a primary residence are eligible costs of the State's new construction and disposition activities for relocating island residents. (84 FR at 4839). HUD also clarified that the placement of restrictions and limitations on the use of land as a primary residence is a condition of the new construction and disposition activities to relocate IDJC residents out of harm's way into more resilient housing, and not acquisition activities triggering buyout requirements. Since the award of the CDBG–NDR funds, the State has moved forward in the planning and development of the new community, New Isle, and has identified several challenges related to the eligibility of some project activities and the timeline for certain activities to meet a national objective, as provided in the CDBG–NDR notice (81 FR 36557). The State has also identified challenges associated with maintaining the affordability of New Isle for resettled residents.

II.A.1. *Background and support for the waivers and alternative requirements necessary for the IDJC Resettlement Project.*

The resettlement of the Isle de Jean Charles community and the development of the more resilient New Isle community is a unique effort by the State of Louisiana to demonstrate, with the support of CDBG–NDR funds, how communities nationwide may implement the voluntary resettlement of a community with diverse cultural identities and traditions, when confronted with repetitive disaster-related losses of land mass due to climate change. The IDJC Resettlement Project has the potential to serve as a model for other communities seeking to manage the retreat and resettlement of communities threatened by climate change.

Almost every IDJC household qualifies as low- or moderate-income, many are elderly and on fixed incomes, and nearly all will face increased overall expenses in relocating from IDJC. The State has therefore requested the following waivers and alternative requirements to address the challenges related to the eligibility and carrying out of activities, meeting of a national objective within the approved period of performance, and use of program income for the IDJC Resettlement Project.

The Department finds that there is good cause for the waivers and alternative requirements in this section because they are necessary to facilitate the IDJC Resettlement Project, which HUD anticipates will serve as a model for communities pursuing the resettlement of low- and moderate-income residents to lower-risk areas, and further the State's recovery goal of a holistic approach to resettlement of a diverse and culturally rich community.

II.A.2. *Activity eligibility of the Isle de Jean Charles Resettlement Project.*

In rare instances, when necessary to achieve recovery goals, HUD has previously granted waivers and alternative requirements to allow a grantee to treat a large complex project with multiple components that contribute to long-term recovery and resilience as a single eligible activity. HUD has determined that the components of the IDJC Resettlement Project are largely eligible CDBG–NDR activities but that the complexity of managing multiple separate eligible activities as components of the overall relocation would detrimentally delay the timeline of this critical recovery project. Therefore, based on the good cause determination described in paragraph II.A.1. and to further facilitate an efficient implementation of the IDJC Resettlement Project, HUD is waiving section 105(a) of the HCDA (42 U.S.C. 5305(a)), as amended, to the extent

necessary to create the new eligible activity of the ''IDJC Resettlement Project,'' comprised of the Residential Assistance Fund (the ''Fund'') described in the next paragraph, as well as the acquisition, infrastructure, housing, economic development, and public service activities described in the State's current, HUD-approved, amended CDBG–NDR action plan. The IDJC Resettlement Project eligible activity is subject to the alternative requirements described below.

The State indicated that one of the new activities of the IDJC Resettlement Project eligible activity will be the establishment of the Fund. The State plans to use CDBG–NDR funds, CDBG–NDR program income generated by economic development activities at New Isle, and other sources to capitalize the Fund. The State indicated that the Fund will be used to assist New Isle homeowners with certain monthly costs (*e.g.,* termite treatment, property insurance, and flood insurance) to maintain the affordability and stability of the New Isle community. HUD recognizes that the relocated residents of the New Isle community will have new expenses than those incurred while living in IDJC and may require additional short-term assistance to maintain their new homes in New Isle. The Department therefore has determined that the State's use of CDBG–NDR for the Fund advances the Department's priority to support forward-thinking solutions to help low- and moderate-income households, facing the imminent threat of sea level rise attributable to climate change, to relocate to new, more resilient, and affordable communities.

Accordingly, under the waiver provided above to establish the IDJC Resettlement Project as a single new eligible CDBG–NDR activity, the State may use CDBG–NDR funds and program income to assist low and moderate-income New Isle residents relocated from the IDJC community with allowable housing costs for up to five years, meaning no beneficiary may receive more than a total of 5 years of this type of assistance or up to a specific amount, as determined by the State, to maintain the stability and affordability of New Isle and resettlement of relocated IDJC residents. HUD is also establishing an alternative requirement that no assistance shall be provided for this purpose until the State submits a substantial action plan amendment for its CDBG–NDR grant. The substantial action plan amendment must include the following:

1. A budget for the Fund,

2. Identify eligible costs under the Fund,

3. Describe how identified costs are allowable in accordance with 2 CFR part 200, subpart E,

4. Describe the criteria that will be used to select beneficiaries and determine the amount of assistance under the Fund,

5. The mechanisms and process to provide the assistance,

6. How the State will oversee and monitor the administration and use of the Fund, and

7. How the State will ensure public transparency regarding the provision of assistance and use of the Fund.

Additionally, CDBG–NDR funds and program income, including any portion used to finance the Fund, shall not be used to compensate beneficiaries for losses from disaster-related impacts.

Finally, as an alternative requirement, and in addition to all other modifications which constitute a substantial amendment requiring HUD approval as described in the **Federal Register** notice published on August 7, 2017 (82 FR 36812 at 36819), the deletion of the Fund or any activity that is part of the ''IDJC Resettlement Project'' as described in the State's current, HUD-approved, amended CDBG–NDR action plan, or the addition of any other activities as part of the ''IDJC Resettlement Project'' constitute a substantial amendment requiring HUD approval.

II.A.3. *National objective compliance for the IDJC Resettlement Project.*

The additional regulatory waivers and alternative requirements provided in this section enable the State to accomplish its goals for the IDJC Resettlement Project. The IDJC Resettlement Project aims to foster the growth of the New Isle's residents and address their housing, economic, and service needs. The IDJC Resettlement Project is not merely replacing the relocated households' homes, but is also carrying out acquisition, infrastructure, housing, economic development, and public service activities intended to create a sustainable, long-term community for these relocated residents. For these reasons and based on the good cause provided in paragraph II.A.1., the Department waives the criteria in 24 CFR 570.483(b) for the IDJC Resettlement Project eligible activity only and establishes the following alternative requirement for the criteria as a means of addressing the objective of benefitting low- and moderate-income (LMI) persons. To demonstrate that the IDJC Resettlement Project eligible activity addresses the objective of benefitting LMI persons, the State must meet all the applicable criteria described below:

1. The State must determine the actual service area benefiting from the IDJC Resettlement Project, in accordance with the regulations. The service area must be primarily residential in character with related cultural and recreational components (*e.g.,* community centers with cultural components);

2. The State must complete the housing units for occupancy by the households that are part of the original IDJC resettlement (at least 34 units of housing) and document that at least 70 percent of those households qualify as LMI;

3. The State must complete the community center, marketplace, recreational facilities, parks, and additional site improvements, as described in its approved action plan, as part of the New Isle community;

4. That State must require its Partners (as defined in the National Disaster Resilience Competition Phase 2 Notice of Funding Availability) and subrecipients to document that any economic development activities funded through the IDJC Resettlement Project are complete and will increase economic opportunity, primarily for LMI persons, through the creation of permanent jobs. The State may presume that any jobs created are held by or made available to a low- or moderate-income person, if the economic development activities are located in the New Isle community;

5. The State must submit a sustainability plan with its substantial action plan amendment adding the Fund as an activity, that is then approved by HUD. The sustainability plan must include prominent posting on the State's official website and must afford citizens, affected local governments, and other interested parties a reasonable opportunity to examine the plan. The State must notify affected citizens through electronic mailings, press releases, statements by public officials, media advertisements, public service announcements, and/or contacts with organizations located in or serving the target area or neighborhood. At a minimum, the sustainability plan must include the following information:

a. An estimate of the amount of taxes and insurance required for each home per year;

b. A detailed description of the process and timeline for New Isle residents to pay for housing costs that were once covered by the Fund, after their assistance from the Fund has ended (*i.e.,* reaches 5 years of assistance or maximum amount set by the State)

and/or the State concludes its use of the Fund;

c. A description of other financial resources, if any, that will be available to support beneficiaries with housing costs after the State concludes use of the Fund;

d. A detailed description of how the State will inform beneficiaries about the Fund, terms and conditions for Fund assistance, and the beneficiaries' financial responsibilities after assistance from the Fund ends; and

e. How the State will detect and prevent fraud, waste, and abuse in the administration and use of the Fund.

II.A.4. *Clarification on Public Services for the Isle de Jean Charles Resettlement Project.*

Additionally, the **Federal Register** notice published on June 7, 2016 (81 FR 36557) waives 42 U.S.C. 5305(e)(3), 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6), including the public benefit standards at 24 CFR 570.482(g), for economic development activities designed to create or retain jobs or businesses. This waiver continues to apply to the State's CDBG–NDR grant.

Finally, all public services carried out as part of the IDJC Resettlement Project shall be exempt from the cap on public service expenditures found in section 105(a)(8) of the HCDA (42 U.S.C. 5305(a)), as amended.

II.B. Waivers and Alternative Requirements for New Jersey's CDBG–DR Grant Under Public Law 113–2 (State of New Jersey Only)

In the **Federal Register** notices published on March 5, 2013 (78 FR 14329) (the ''March 2013 Notice''), November 18, 2013 (78 FR 69104) (the ''November 2013 Notice''), and October 16, 2014 (79 FR 62182) (the ''October 2014 Notice''), HUD awarded a total of $4,174,110,000 in CDBG–DR funds to the State of New Jersey for recovery from Superstorm Sandy from Public Law 113–2 of which $380,000,000 were for Rebuild by Design (RBD) also under Public Law 113–2.

The **Federal Register** notice published on May 24, 2022 (87 FR 31636) (the ''May 2022 Notice'') announced the allocation of $228,346,000 of CDBG–DR funds under Public Law 117–43 (the ''2022 Appropriations Act'') and the **Federal Register** notice published on January 18, 2023 (87 FR 3198) (the ''January 2023 Notice'') announced the allocation of $149,229,000 of CDBG–DR funds under Public Law 117–180 (the ''2023 Appropriations Act'') for a total of $377,575,000 in CDBG–DR funds to the State of New Jersey for recovery from Tropical Storm Ida (collectively referred to as ''the Appropriations Acts''). The 2022 Appropriations Act gives the Secretary authority to authorize grantees receiving a CDBG–DR grant under the 2022 Appropriations Acts and prior or future appropriation acts for activities authorized under title I of the HCDA for a specific qualifying disaster(s) to use these funds interchangeably and without limitation for the same activities in the most impacted and distressed (MID) areas resulting from a major disaster in prior or future appropriation acts, as long as the MID areas overlap and the activities address unmet needs of both disasters.

Based on this authority, New Jersey's CDBG–DR grants for Tropical Storm Ida and its CDBG–DR grants for Superstorm Sandy may be used interchangeably and without limitation for the same activities in MID areas resulting from Superstorm Sandy or Tropical Storm Ida, if the MID areas of both disasters overlap and the activities address unmet needs of both disasters, as described in the May 2022 Notice and the January 2023 Notice. The State has requested, and HUD is providing the following waivers and alternative requirements to the State of New Jersey to carry out activities that will benefit Tropical Storm Ida beneficiaries. Both waivers and alternative requirements provided herein will help the State to expedite the delivery of assistance through programs that address the same activities related to unmet recovery needs resulting from Superstorm Sandy and Tropical Storm Ida in the MID areas that overlap. The grantee must describe its use of funds in both its CDBG–DR action plans for Superstorm Sandy and Tropical Storm Ida.

II.B.1. *Waiver to Allow the Use of CDBG–DR Funds Provided Under Public Law 113–2 for Rental Assistance (State of New Jersey only).*

The State's request notes that after Superstorm Sandy, the State identified a significant shortage of rental housing as a result of the storm, particularly in the MID areas, with rental stock being virtually non-existent. HUD and the State have evaluated the State's program budgets and the State has forecasted expenditures to determine that the State's Superstorm Sandy related unmet needs will be satisfied with the existing programs in place, while impacts related to Tropical Storm Ida have created new unmet rental needs that have further exacerbated issues associated with the COVID–19 pandemic.

Prior to Tropical Storm Ida, New Jersey's housing conditions were already under significant strain from the ongoing national housing crisis and supply chain issues from the COVID–19 pandemic. These issues combined with the subsequent impacts of the storm drastically escalated the State's housing and homelessness crises. At the time of the State's waiver request, the risk of eviction in New Jersey was greater than anywhere else in the country as 393,000 households were delinquent on their rent. These eviction pressures are faced primarily by residents of color, households with children, and in urban areas—including those disaster-impacted urban areas—where low-income populations are particularly vulnerable. In the State, more than 25 percent of renter households are extremely low income and 73 percent of these extremely low-income renters suffer from severe housing cost burden.

Due to the impacts of Tropical Storm Ida, over 8,000 homeowners and 4,500 renters experienced major to severe damage to their homes, as defined by HUD. The State of New Jersey has prioritized housing rehabilitation that will primarily benefit LMI households, through a phased approach for its homeowner program and by limiting its rehabilitation of rental housing to housing that will be affordable to LMI households. However, these units will take several years to be fully repaired and accessible. During that time, LMI residents residing in the MID areas could face unaffordable rents on top of an affordable housing crisis. Rents in the HUD MID-areas have considerably increased since Tropical Storm Ida. From 2021 to the anticipated launch of the State's CDBG–DR programs in 2023, rents in the HUD MID areas will have increased in some counties by over 10 percent and are expected to continue to rise over the next two to three years.

The State plans to use its CDBG–DR funds under Public Law 113–2 to offer rental assistance and utility payments in the form of direct payments to homeowners or renters who are displaced and homeless or at-risk of homelessness as a result of the impacts of Tropical Storm Ida when such assistance payments are part of a homelessness prevention, intermediate housing, or rapid rehousing program activity, including intermediate housing during the repair and reconstruction of homes.

After reviewing the State's request and based on the good cause that the waiver and alternative requirements will help homeowners and renters that are displaced and impacted by Tropical Storm Ida to obtain and remain in housing that is in limited supply due to New Jersey's ongoing housing and homelessness crises, the Department is imposing an alternative requirement to waive and modify 42 U.S.C. 5305(a)(8)

to expand the definition of public service to include the following activity: provision of rental assistance (*e.g.* rent, security deposits, and utility deposits) and utility payments for up to 24 months for the State of New Jersey's funds provided under Public Law 113–2 to address unmet needs from Tropical Storm Ida, subject to the following alternative requirements.

This activity is subject to the 15 percent cap on public services, and no beneficiary may receive more than a total of 24 months of rental assistance and utility payments. A homeowner receiving any form of CDBG–DR interim mortgage assistance that may be offered by the State is not eligible for rental assistance or utility payments, as authorized by this waiver and alternative requirement.

The State must determine that the rental assistance and utility payments are needed because the household moved from their primary residence due to rehabilitation or reconstruction needs from Tropical Storm Ida, the household is experiencing or is at risk of experiencing homelessness and the assistance is part of a homelessness prevention or rapid rehousing program or activity, or other disaster-related pressures on the housing market necessitate the assistance to support the household's recovery.

While this waiver and alternative requirement will allow the State to provide rental assistance and utility payments to households impacted by Tropical Storm Ida, this does not relieve the State of the duty to comply with other applicable requirements relating to the temporary relocation or displacement of households. If a household meets the definition of a ''displaced person'' under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 *et seq.*) (''URA'') or Section 104(d) of the HCDA (42 U.S.C. 5304(d)) (''Section 104(d)''), the State must provide the displaced person with any relocation assistance to which they are entitled under law, including but not limited to assistance authorized under the URA or Section 104(d), pursuant to those requirements in the applicable notices, as modified by the waiver of Section 414 of the Stafford Act in Section II.B.2., below.

The goals of this waiver and alternative requirement are to prevent and minimize the time households are experiencing or are at risk of experiencing homelessness as a result of the qualifying disaster and to provide additional time to stabilize persons or households in permanent housing through the use of CDBG–DR funds for rental assistance and utility payments. The use of CDBG–DR funds for each of these purposes advances the Department's priority to support forward-thinking solutions to help communities that are struggling to house and serve persons and families that are homeless or at risk of homelessness as a result of a disaster.

When providing rental assistance and utility payments to beneficiaries who are at risk of homelessness, the State must clearly demonstrate in their action plan the concrete steps they will take to prevent households from becoming homeless after the exhaustion of the CDBG–DR rental assistance. In addition, in developing their policies and procedures, the State must list services to be provided and outline a referral process that will enable the targeted households to apply to live in affordable housing units, including those that are created under other CDBG–DR funded programs.

HUD has previously certified the State's procedures to detect fraud, waste, and abuse prior to the obligation of Superstorm Sandy funding. To fortify these requirements and achieve a targeted use of funds and to safeguard against fraud, the State must amend the provisions in its policies and procedures to show how the State will verify the accuracy of information provided by applicants to its rental assistance and utility payment program, how the State will document that the applicant used the funds for only the eligible uses defined in its action plan or the program's policies and procedures, and how the State will detect and prevent fraud, waste, and abuse in its rental assistance and utility payment programs. The State must document, in its policies and procedures, how it will determine the basis of the rental assistance and utility payments award for each household assisted and that the amount of the assistance to be provided is necessary and reasonable and not duplicative of any other funding source, including insurance. To comply with the order of assistance requirements in the Appropriations Acts, any rental or temporary housing assistance provided by or made available by the Federal Emergency Management Agency (FEMA) must first be exhausted prior to providing CDBG–DR funds to a household for the uses permitted by this waiver and alternative requirement.

II.B.2. *Waiver of Section 414 of the Stafford Act (42 U.S.C. 5181 (State of New Jersey only).*

The State of New Jersey has requested a waiver of section 414 of the Stafford Act (42 U.S.C. 5181), as amended, for real property acquisition, rehabilitation, and demolition of real property for CDBG–DR activities funded by Public Law 113–2 that will address the unmet housing needs from Tropical storm Ida.

Section 414 of the Stafford Act provides that ''Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) [42 U.S.C. 4601 *et seq.*] [(''URA'')] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by [the URA].'' Accordingly, homeowner occupants and tenants displaced from their homes as a result of an identified disaster and who would have otherwise been displaced as a direct result of any acquisition, rehabilitation, or demolition of real property for a federally funded program or project may become eligible for a replacement housing payment notwithstanding their inability to meet occupancy requirements prescribed in the URA.

The State has requested a waiver of section 414 of the Stafford Act to better align its CDBG–DR grants funded by Public Law 113–2 for Superstorm Sandy with its grants funded by the 2022 and 2023 Appropriations Acts. The State contends that this waiver, granted for all funds under the 2022 and 2023 Appropriations Acts, will allow it to implement its programs for Tropical storm Ida beneficiaries consistently, whether the program is being funded under Public Law 113–2 or the 2022 and 2023 Appropriations Acts.

HUD provided the waiver for grants under the 2022 and 2023 Appropriations Acts to simplify the administration of the disaster recovery process and reduce the administrative burden associated with the implementation of section 414 requirements for projects commencing more than one year after the date of the Presidentially declared disaster considering most of such persons displaced by the disaster will have returned to their dwellings or found another place of permanent residence.

Therefore, the Department has determined that good cause exists for a waiver for the State's funds under Public Law 113–2 and waives section 414 of the Stafford Act and its implementing regulation at 49 CFR 24.403(d)(1) to the extent that they would apply to real property acquisition, rehabilitation, or demolition of real property for a CDBG–DR funded project commencing more

than one year after the date of Tropical Storm Ida undertaken by the State, or its subrecipients, provided that the project was not planned, approved, or otherwise underway before the date of the disaster.

For purposes of this waiver, a CDBG–DR funded project shall be determined to have commenced on the earliest of: (1) the date of an approved Request for Release of Funds and certification; (2) the date of completion of the site-specific review when a program utilizes Tiering; or (3) the date of sign-off by the approving official when a project converts to exempt under 24 CFR 58.34(a)(12).

This waiver does not apply with respect to persons that meet the occupancy requirements to receive a replacement housing payment under the URA nor does it apply to persons displaced or relocated temporarily by other HUD-funded programs or projects. Such persons' eligibility for relocation assistance and payments under the URA is not impacted by this waiver.

III. Public Law 115–123 Waivers and Alternative Requirements

Revision of Electrical Power System Consultation Requirements (Commonwealth of Puerto Rico and U.S. Virgin Islands Only)

The **Federal Register** notice published on June 22, 2021 (86 FR 32681) (the ''June 2021 Notice'') established the requirements for the nearly $28 billion in CDBG–DR funds approved February 9, 2018 by the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Pub. L. 115–123), including $2 billion for enhanced or improved electrical power systems in the Commonwealth of Puerto Rico (the Commonwealth) and the U.S. Virgin Islands (USVI) to address the impact of Hurricanes Irma and Maria on each grantee's electrical power system.

Because of the unique purpose of this $2 billion allocation of CDBG–DR funds, in recognition of the many Federal agencies that would be providing assistance to the Commonwealth and the USVI to enhance and improve each jurisdiction's electrical power system, and because of the historical and on-going fiscal and operational challenges of each of the public utilities that operate the Commonwealth and USVI systems, the June 2021 Noticeestablished a number of on-going coordination requirements unique to this allocation.

In February 2020, FEMA and the U.S. Department of Energy (DOE) established Energy Technical Coordination Teams (''TCT'') at each jurisdiction as a formal mechanism for coordination among the numerous local and Federal entities involved in electricity grid recovery to facilitate decision making and ensure the best use of expertise, solutions, and funds in the implementation of energy recovery activities. Section V.A.2.e. of the June 2021 Notice requires each grantee to consult at least quarterly with its respective TCT on one or more of the following areas: on the action plan required by the June 2021 Notice for the use of the CDBG–DR funds and any substantial amendments to that plan; the evaluation of the capacity of any public utility that will receive CDBG–DR funds to carry out improvements; the identification of opportunities to sequence and coordinate on permits and approvals necessary to carry out CDBG–DR funded electrical power system improvement activities, including environmental reviews; the technical evaluation of proposed electrical power system improvements; and implementation of applicable electrical power system industry standards and the commercial availability of system components that the grantee proposed to fund.

To ensure the coordination of electrical power system improvements that may be funded from each grantee's other allocations of CDBG–DR and CDBG mitigation (CDBG–MIT) funds provided in response to Hurricanes Irma and Maria, the June 2021 Notice also prohibits the use of other CDBG–DR and CDBG–MIT funds for electrical power system improvements until HUD consults and coordinates with its Federal members through the TCTs. The June 2021 Notice also provides that HUD shall determine when the required consultations previously noted shall be deemed complete.

Since the publication of the June 2021 Notice, each grantee has proactively engaged with its respective TCT on a wide range of issues associated with its planned and on-going electrical power system improvements. In January 2022, HUD, FEMA, and DOE also executed a memorandum of understanding establishing a framework outside of the TCT for coordination and providing technical assistance to the Commonwealth. Additionally, following Hurricane Fiona, the Administration announced the formation of a Puerto Rico Grid Recovery and Modernization Team, to be led by DOE, to coordinate Federal grid recovery and modernization efforts.

In recognition of these developments and the critical importance of accelerating electrical power system improvements following the devastating impact of Hurricane Fiona in September 2022, HUD finds good cause to waive and revise the consultation requirements of its June 2021 Notice as follows:

Upon approval by HUD of an action plan providing for the use of a grantee's total allocation of funds for electrical power system improvements as provided by the June 2021 Notice:

(1) Paragraph V.A.2.e of the June 2021 Notice, and as referenced elsewhere in the June 2021 Notice, with respect to TCT consultation shall no longer apply; provided that, at the request of HUD, each grantee shall engage with its TCT to provide updates on its implementation of CDBG–DR, CDBG–MIT, and other Federal funding for electrical power system improvements until grant closeout; and

(2) The consultation requirements at paragraph V.B.4 of the June 2021 Notice that prohibits grantees from using other CDBG–DR and CDBG–MIT funds provided in response to Hurricanes Irma and Maria for activities to enhance or improve electrical power systems until HUD consults and coordinates with its Federal members through the TCT shall no longer apply.

HUD will continue to engage its Federal partners directly in providing ongoing technical assistance to each grantee and in monitoring each grantee's use of all CDBG–DR and CDBG–MIT funds used for electrical power system improvements. HUD will also continue to engage its Federal partners through the TCTs, the Recovery Support Function Leadership Group (RSFLG) energy subgroup, and other forums.

IV. Public Law 116–20 Waivers and Alternative Requirements

Waiver and Alternative Requirement for 70 Percent Overall Low- and Moderate-Income Benefit Requirement (State of California Only)

The **Federal Register** notice published on January 27, 2020 (85 FR 4681) (''January 2020 Notice'') included an allocation of $38,057,527 appropriated under the Additional Supplemental Appropriations for Disaster Relief Act, 2019 (Pub. L. 116–20) to the State of California for recovery from 2017 wildfires and 2017–2018 wildfires, flooding, mudflows, and debris flows. These funds have been provided to meet the unmet infrastructure recovery needs in the HUD-defined MID areas. Prior to this award, HUD also allocated $124,155,000 under Public Law 115–123 to the State for recovery from the same disasters in the **Federal Register** notice published on August 14, 2018 (83 FR 40314).

The overall benefit requirement established by the HCDA requires that 70 percent of the aggregate of a grantee's

CDBG–DR fund expenditures shall be used to support activities benefiting LMI persons. Under certain circumstances, it can be difficult for grantees working in disaster recovery to meet this overall benefit test because the MID areas resulting from a disaster may not be low- and moderate-income areas, and this requirement can therefore (in some exceptional cases) limit a grantee's ability to assist those affected by the disaster. The January 2020 Notice maintained the 70 percent overall benefit requirement for all CDBG–DR grantees receiving funds under Public Law 116–20 and the notice imposed the requirements of the February 9, 2018 notice (83 FR 5844) (''February 2018 Notice''), which provides grantees with the option of submitting a request to HUD for a lower overall benefit requirement. Specifically, the February 2018 Notice allows a grantee to request to further reduce its overall benefit requirement if it submitted a justification that, at a minimum: (a) identifies the planned activities that meet the needs of its low- and moderate-income population; (b) describes proposed activity(ies) and/or program(s) that will be affected by the alternative requirement, including their proposed location(s) and role(s) in the grantee's long-term disaster recovery plan; (c) describes how the activities/programs identified in (b) prevent the grantee from meeting the 70 percent requirement; and (d) demonstrates that low- and moderate-income persons' disaster-related needs have been sufficiently met and that the needs of non-LMI persons or areas are disproportionately greater, and that the jurisdiction lacks other resources to serve them.

The State submitted a request to establish a lower overall benefit requirement based on the above criteria. In its request, the State contends that its two established programs: Owner-Occupied Rehabilitation and Reconstruction Program (OOR) and Multifamily Housing Program funded under Public Law 115–123 will meet the unmet needs of its LMI populations. Specifically, in its OOR program, the State has prioritized the needs of LMI persons and estimates that the program will expend at least 90 percent of funds for the benefit of LMI households. The Multifamily Housing Program is limited to projects that meet the LMI National Objective criteria, and the State estimates the program will expend 100 percent of funds for the benefit of LMI households. Based on these estimates, the total projected LMI benefit percentage for the State's allocation under Public Law 115–123 will be 96 percent, which demonstrates the State's commitment to meeting the needs of its LMI populations. While the Department evaluates overall benefit for each grant separately, the allocations from Public Laws 115–123 and 116–20 support recovery from the same disasters in the same MID areas, and the total projected LMI benefit percentage when combining the allocations would be 82 percent.

The State's allocation under Public Law 116–20 was limited to allow the State to only address its unmet infrastructure recovery needs. For this allocation, the State expanded its original Infrastructure Program proposed in its initial action plan to include standalone infrastructure projects and FEMA Hazard Mitigation Grant Program Non-Federal match activities in addition to FEMA Public Assistance non-federal match projects.

When considering its unmet infrastructure needs, the State indicated in its request that the total LMI percentage of the population in the HUD-identified MID areas is 42 percent, and the City of Clearlake is the only jurisdiction that is a MID area and would also qualify as an eligible LMI area. To address the needs of LMI households throughout the MID areas, the State prioritized infrastructure projects in MID areas that would benefit LMI areas through its Notice of Intent (NOI) process where eligible applicants submitted proposed infrastructure projects to meet the unmet infrastructure need in their community. The State also conducted extensive outreach to potential applicants by hosting multiple webinars and holding office hours for months during and after the NOI process. Despite these efforts, the State's CDBG–DR funded infrastructure program only received nine project applications from four eligible applicants: City of Clearlake, City of Santa Rosa, Santa Barbara County, and Sonoma County. Of the nine applications, three projects qualify for the LMI national objective, and all LMI projects will derive from a single eligible applicant, the City of Clearlake, leading to the allocation's total projected LMI benefit percentage being 38 percent.

To enable the State to undertake the activities it has determined to be the most critical for its recovery and LMI households in the MID areas, HUD is granting a waiver and alternative requirement to reduce the overall benefit requirement from 70 percent to not less than 38 percent of the State's total allocation of CDBG–DR funds for its unmet infrastructure recovery needs. This is a limited waiver modifying sections 101(c) and 104(b)(3)(A) of the HCDA and 24 CFR 570.200(a)(3) only to the extent necessary to reduce the LMI overall benefit requirement that the State must meet when carrying out activities identified in its approved action plan from 70 percent to not less than 38 percent of the grantee's allocation of CDBG–DR funds under Public Law 116–20 for its unmet infrastructure recovery needs. Based on the analysis submitted by the State, the Secretary finds good cause for this waiver and alternative requirement due to the circumstances outlined in the State's request. In particular, HUD notes that the State had demonstrated that it has sufficiently addressed LMI unmet recovery needs through both its CDBG–DR allocations awarded under Public Laws 115–123 and 116–20, conducted significant amounts of public outreach when determining LMI unmet infrastructure needs, and prioritized and selected infrastructure projects serving LMI areas, even though the LMI percentage of the MID areas was only 42 percent.

V. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available online on HUD's CDBG–DR website at *https://www.hud.gov/program_offices/comm_planning/cdbg-dr* and for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Adrianne Todman,

Deputy Secretary.

[FR Doc. 2024–01116 Filed 1–19–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_AZ_FRN_MO4500176275]

Notice of Public Comment Period on Proposed Recreational Shooting Closure in the Sonoran Desert National Monument, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of comment period.

SUMMARY: In accordance with the John D. Dingell, Jr. Conservation, Management, and Recreation Act of 2019, the Bureau of Land Management (BLM) is giving notice of a 60-day public comment period on the proposed recreational shooting closure included in the Proposed Sonoran Desert National Monument (SDNM) Resource Management Plan (RMP) Amendment and Final Environmental Assessment (2023).

DATES: The BLM will accept comments on the proposed SDNM target shooting closure included in the preferred alternative for 60 days. Written comments must be postmarked or electronically submitted to the BLM email address listed in the **ADDRESSES** section no later than March 22, 2024.

ADDRESSES: You may submit comments regarding the proposed recreational shooting closures, by any of these methods:

- *Email: BLM_AZ_SDNMtargetshooting@blm.gov*
- *Mail:* BLM, Sonoran Desert National Monument, Attn.: RMPA EA, 2020 E Bell Road, Phoenix, AZ 85022.

You may examine documents and maps pertinent to this proposal online at *https://eplanning.blm.gov/eplanning-ui/project/2019811/510* or at the Phoenix District Office, 2020 E Bell Road, Phoenix, Arizona 85022.

FOR FURTHER INFORMATION CONTACT: Tyler Lindsey, Lower Sonoran Field Manager, telephone 480–259–7436; address 2020 E. Bell Road, Phoenix, Arizona 85022; email *tlindsey@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 Proposed SDNM RMP Amendment and Final Environmental Assessment considered four alternatives with a range of acres available for recreational target shooting. The preferred alternative in the proposed amendment is Alternative C, which would close 480,496 acres of public lands in the SDNM to recreational target shooting. Recreational target shooting would remain available on 5,295 acres of the SDNM. These lands are administered by the BLM Lower Sonoran Field Office. The proposed closure is for the smallest area necessary to ensure compliance with Presidential Proclamation 7397 and protect the objects and values for which the monument was designated. The proposed closure was analyzed in the environmental assessment.

The Sonoran Desert National Monument was established by Presidential Proclamation 7397 in 2001 and contains approximately 485,791 acres of BLM-administered public lands in Maricopa and Pinal counties, Arizona. The monument was created to protect an array of scientific, biological, archaeological, geological, cultural, and historic objects (66 FR 7354).

The BLM completed the SDNM Record of Decision and Approved RMP in 2012. Under a March 2015 court order, the BLM was required to reanalyze the impacts of recreational target shooting in the monument. In 2018, the BLM amended the RMP to allow dispersed recreational shooting in approximately 90 percent of the monument. That decision was challenged in 2019, and a settlement agreement in that case required this new planning effort.

The BLM prepared the SDNM Recreational Target Shooting RMP Amendment and Environmental Assessment in response to the April 2022 settlement agreement. The RMP Amendment considers whether and where recreational target shooting should be allowed in the monument, along with any associated management actions. In accordance with the settlement agreement, the BLM prepared a suitability analysis that considered those areas of the monument that are suitable for recreational target shooting based on the presence of monument objects, the resiliency of those objects to recreational target shooting, and topographic features. This information, in addition to public safety considerations and federal and state laws and regulations governing the discharge of firearms on public lands, helped inform the alternatives analyzed in the EA.

The National Park Service and the Arizona Game and Fish Department participated as cooperating agencies in the development of the RMP Amendment.

Following the public comment period, the BLM will respond to the substantive comments regarding the proposed recreational shooting closure in its decision document. See *https://eplanning.blm.gov/eplanning-ui/project/2019811/510.*

To afford the BLM the opportunity to consider comments on the proposed SDNM target shooting closures before approval of the Decision Record/RMP Amendment, please ensure your comments are received by the date listed in the **DATES** section. Comments may be submitted using the methods listed in the **ADDRESSES** section above.

The proposed RMP Amendment and finding of no significant impact also include a 30-day protest period that begins with the 60-day Dingell Act comment period announced under this notice. Information on filing a plan protest is available online at *https://www.blm.gov/programs/planning-and-nepa/public-participation/filing-a-plan-protest.*

Before including your address, phone number, email address, or other personal identifying information in any comment, 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, the BLM cannot guarantee that we will be able to do so.

Authority: 16 U.S.C. 7913 and 43 CFR 1610.2.

Raymond Suazo,

State Director, Arizona.

[FR Doc. 2024–01063 Filed 1–19–24; 8:45 am]

BILLING CODE 4331–12–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2023–0008]

Procedures for Determining Bid Adequacy at Outer Continental Shelf Oil and Gas Lease Sales

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notification of procedural changes.

SUMMARY: The Bureau of Ocean Energy Management (BOEM) has finalized revisions to its bid adequacy procedures to ensure the receipt of fair market value from Outer Continental Shelf (OCS) oil and gas lease sales. BOEM intends to assess bids using the revised procedures beginning with the first lease sale under

the 2024–2029 National OCS Oil and Gas Leasing Program. The revised procedures and BOEM's response to public comments on the draft procedures are available at *https://www.boem.gov/Fair-Market-Value.*

FOR FURTHER INFORMATION CONTACT: Matt Frye, Chief, Resource Evaluation Division, Office of Strategic Resources, at (703) 787–1514 or email at *matt.frye@boem.gov.*

SUPPLEMENTARY INFORMATION: On January 19, 2023, BOEM published its proposed revised bid adequacy procedures in the **Federal Register** (''Modifications to the Bid Adequacy Procedures for Offshore Oil and Gas Lease Sales,'' 88 FR 3433) and requested public comments on the proposed revisions. The comment period closed on March 6, 2023. BOEM received a total of 15,537 comments from three individuals and four organizations, including one submission with 15,531 signatures. Thus, a total of seven distinct comments [1] were received.

BOEM reviewed all comments received and addressed those comments directly related to the proposed revised bid adequacy procedures. BOEM's response to those comments can be found at *https://www.boem.gov/Fair-Market-Value.* While BOEM did not make any substantive changes to its revised bid adequacy procedures based on the feedback received, BOEM provided additional detail on a specific calculation included in the revised procedures. The revised procedures have been finalized and are available at *https://www.boem.gov/Fair-Market-Value.* BOEM intends to assess bids using the revised procedures beginning with the lease sales in the next National OCS Oil and Gas Leasing Program.

Authority: 43 U.S.C. 1331 *et seq.* (Outer Continental Shelf Lands Act, as amended) and 30 CFR part 556.

Elizabeth Klein,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2024–01070 Filed 1–19–24; 8:45 am]

BILLING CODE 4340–98–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–582 and 731–TA–1377 (Review)]

Ripe Olives From Spain; Scheduling of Full Five-Year Reviews

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping and countervailing duty orders on ripe olives from Spain would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days.

DATES: January 16, 2024.

FOR FURTHER INFORMATION CONTACT: Caitlyn Hendricks-Costello ((202) 205–2058), 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 these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On October 6, 2023, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews should proceed (88 FR 73043, October 24, 2023); accordingly, full reviews are 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 these reviews 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 these reviews 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 these reviews 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 these reviews.

For further information concerning the conduct of these reviews 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 these reviews available to authorized applicants under the APO issued in these reviews, 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 these reviews. A party granted access to BPI following publication of the Commission's notice of institution of these reviews 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 these reviews will be placed in the nonpublic record on May 9, 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 these reviews beginning at 9:30 a.m. on Thursday, May 30, 2024. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before Wednesday, May 22, 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 these reviews, 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 p.m. the business day prior to the hearing. Further information

[1] *https://www.regulations.gov/document/BOEM-2023-0008-0001/comment.*

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 Friday, May 24, 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 May 29, 2024 (one business day prior to hearing). 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 these reviews 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 May 20, 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 June 10, 2024. In addition, any person who has not entered an appearance as a party to these reviews may submit a written statement of information pertinent to the subject of these reviews on or before 5:15 p.m. on June 10, 2024. On July 8, 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 July 10, 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 these reviews must be served on all other parties to these reviews (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.

The Commission has determined that these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C.1675(c)(5)(B).

Authority: These reviews are 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: January 16, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–01076 Filed 1–19–24; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0148]

Proposed Extension of Information Collection; Proximity Detection Systems for Continuous Mining Machines in Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information, in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Proximity Detection Systems for Continuous Mining Machines in Underground Coal Mines.

DATES: All comments must be received on or before March 22, 2024.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below. Please note that late comments received after the deadline will not be considered.

- *Federal E-Rulemaking Portal: https://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2023–0057.
- *Mail/Hand Delivery:* DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.
- MSHA will post all comments as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977, as amended (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811(a), authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise, as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

Under 30 CFR 75.1732, underground coal mine operators must equip continuous mining machines, except full-face continuous mining machines, with proximity detection systems. Miners working near continuous mining machines face pinning, crushing, and striking hazards that result in accidents

involving life-threatening injuries and death. Proximity detection is a technology that uses electronic sensors to detect the motion or the location of one object relative to another. Proximity detection systems provide a warning and stop continuous mining machines before a pinning, crushing, or striking accident occurs that could result in injury or death to a miner.

Under 30 CFR 75.1732(d)(1), at the completion of the check of the machine-mounted components of the proximity detection system described under 75.1732(c)(1), a certified person must certify by initials, date, and time that the check was conducted. The certified person is defined under 30 CFR 75.100 as a person who has been certified as a mine foreman (mine manager), an assistant mine foreman (section foreman), or a preshift examiner (mine examiner). Defects found as a result of the check, including corrective actions and dates of corrective actions, must be recorded before the end of the shift.

Under 30 CFR 75.1732(d)(2), the operator must make a record of the defects found as a result of the checks of miner-wearable components required under 75.1732(c)(2), including corrective actions and dates of corrective actions.

Under 30 CFR 75.1732(d)(3), the operator must make a record of the persons trained in the installation and maintenance of proximity detection systems under 75.1732(b)(6).

Under 30 CFR 75.1732(d)(4), the operator must maintain records in a secure book or electronically in a secure computer system not susceptible to alteration.

Under 30 CFR 75.1732(d)(5), the operator must retain records for at least one year and make them available for inspection by authorized representatives of the Secretary and representatives of miners.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Proximity Detection Systems for Continuous Mining Machines in Underground Coal Mines. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The information collection request will be available on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at DOL–MSHA, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This information collection request concerns provisions for Proximity Detection Systems for Continuous Mining Machines in Underground Coal Mines. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0148.

Affected Public: Business or other for-profit.

Number of Annual Respondents: 168.

Frequency: Annually.

Number of Annual Responses: 245,337.

Annual Burden Hours: 697 hours.

Annual Respondent or Recordkeeper Cost: $0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and be available at *https://www.reginfo.gov.*

Song-ae Aromie Noe,

Certifying Officer, Mine Safety and Health Administration.

[FR Doc. 2024–01119 Filed 1–19–24; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2023–0012]

Federal Advisory Council on Occupational Safety and Health (FACOSH), Request for Nominations

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for nominations to serve on the Federal Advisory Council on Occupational Safety and Health (FACOSH).

SUMMARY: The Assistant Secretary of Labor for Occupational Safety and Health Administration (OSHA) invites interested parties to submit nominations for membership on the Federal Advisory Council on Occupational Safety and Health (FACOSH).

DATES: Nominations for FACOSH must be submitted (postmarked, sent, transmitted, or received) by February 23, 2024.

ADDRESSES: You may submit nominations and supporting materials by one of the following methods:

Electronically: You may submit nominations, including attachments, electronically into Docket No. OSHA–2023–0012 at *www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the online instructions for submissions.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for the inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and OSHA docket number for this **Federal Register** notice (OSHA–2023–0012). OSHA will

place comments, including personal information, in the public docket, which may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates.

FOR FURTHER INFORMATION CONTACT:

Press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General information: Ms. Lana Nieves, Supervisor, OSHA Office of Federal Agency Programs; telephone (202) 693–2128; email: *ofap@dol.gov.*

Copies of this ***Federal Register*** *document:* Electronic copies of this **Federal Register** document are available at *http://www.regulations.gov.* This document, as well as news releases and other relevant information are also available on the OSHA web page at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FACOSH is authorized to advise the Secretary of Labor (Secretary) on all matters relating to the occupational safety and health of Federal employees (Occupational Safety and Health Act of 1970 (29 U.S.C. 668), 5 U.S.C. 7902, Executive Orders 12196 and 14109. This includes providing advice on how to reduce and keep to a minimum the number of injuries and illnesses in the Federal workforce and how to encourage the establishment and maintenance of effective occupational safety and health programs in each Federal agency. The FACOSH charter is available to read or download at *http://www.osha.gov.*

II. FACOSH Membership

FACOSH is comprised of 16 members (eight members represent management of federal agencies and departments and eight members are from labor organizations that represent federal employees) who the Secretary appoints to staggered terms not to exceed three (3) years. The Assistant Secretary, who chairs FACOSH, is seeking nominations to fill a labor member position on FACOSH that became vacant on November 30, 2023. This is a mid-term appointment, and the term will end on December 31, 2024.

FACOSH members serve at the pleasure of the Secretary unless the member is no longer qualified to serve, resigns, or is removed by the Secretary. The Secretary may appoint FACOSH members to successive terms. FACOSH meets at least two (2) times per year. The Department of Labor is committed to equal opportunity in the workplace and seeks broad-based and diverse FACOSH membership. Any interested person or organization may nominate one (1) or more qualified persons for membership on FACOSH. Interested persons also are invited and encouraged to submit statements in support of particular nominees.

III. Nomination Requirements

Nominations must include the following information:

1. The nominee's contact information and current occupation or position;
2. Nominee's resume or curriculum vitae, including prior membership on FACOSH and other relevant organizations, associations, and committees;
3. A summary of the nominee's background, experience, and qualifications that addresses the nominee's suitability for the nominated membership category of labor representative;
4. Articles or other documents the nominee has authored that indicate the nominee's knowledge, experience, and expertise in occupational safety and health, particularly as it pertains to the Federal workforce; and
5. A statement that the nominee is aware of the nomination, is willing to regularly attend and participate in FACOSH meetings and has no apparent conflicts of interest that would preclude membership on FACOSH.

IV. Member Selection

The Secretary will appoint FACOSH members based on criteria including, but not limited to, the nominee's level of responsibility for occupational safety and health matters involving the Federal workforce, experience and competence in occupational safety and health, and willingness and ability to participate in FACOSH meetings regularly and fully. Labor nominees who are responsible for Federal employee occupational safety and health matters within their respective organizations are preferred. The information received through the nomination process, along with other relevant sources of information, will assist the Secretary in making appointments to FACOSH. In selecting FACOSH members, the Secretary will consider individuals nominated in response to this **Federal Register** notice, as well as other qualified individuals. OSHA will publish the new FACOSH member in the **Federal Register**.

Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 19 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 668), 5 U.S.C. 7902, the Federal Advisory Committee Act (5 U.S.C. 10), Executive Order 12196 and 14109 Secretary of Labor's Order 8–2020 (85 FR 58393, 9/18/2020), 29 CFR part 1960 (Basic Program Elements of for Federal Employee Occupational Safety and Health Programs), and 41 CFR part 102–3.

Signed at Washington, DC.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–01118 Filed 1–19–24; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Wage and Hour Division

Notice of Approved Agency Information Collection; Information Collection: Employment Information Form

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA), the Wage and Hour Division (WHD) is providing notice to the public that the WHD sponsored information collection request (ICR) titled ''Employment Information Form,'' has been approved by the Office of Management and Budget (OMB). WHD is notifying the public that the information collection has been revised and extended effective immediately through January 31, 2027.

DATES: The OMB approval of the revision of this information collection is effective immediately with an expiration date of January 31, 2027.

FOR FURTHER INFORMATION CONTACT: Robert Waterman, Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number) or by sending an email to *WHDPRAComments@dol.gov.* Alternative formats are available upon request by calling 1–866–487–9243. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: The Department of Labor submitted a proposed revision to the information collection titled Employment Information Form (OMB Control Number 1235–0021) in conjunction

with a proposed rule published in the **Federal Register** on July 15, 2022 (87 FR 42552) and a final rule. The final rule titled ''Nondisplacement of Qualified Workers Under Service Contracts,'' published in the **Federal Register** on December 14, 2023 (88 FR 86736). OMB issued a Notice of Action (NOA) on January 12, 2024, approving the collection and extending the expiration of the collection to January 31, 2027, under OMB Control Number 1235–0021.

Section (k) of 5 CFR 1320.11, ''Clearance of Collections of Information in Proposed Rules'' states, ''After receipt of notification of OMB's approval, instruction to make a substantive or material change to, disapproval of a collection of information, or failure to act, the agency shall publish a notice in the **Federal Register** to inform the public of OMB's decision.'' This notice fulfills the Department's obligation to notify the public of OMB's approval of the information collection request.

Amy Hunter,

Director, Division of Regulations, Legislation, and Interpretation.

[FR Doc. 2024–01117 Filed 1–19–24; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

60-Day Notice for ''Civil Rights Evaluation Tool''

AGENCY: National Endowment for the Arts.

ACTION: Notice of proposed collection; comment request.

SUMMARY: The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data is provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents is properly assessed. Currently, the NEA is soliciting comments concerning the proposed information collection of: Civil Rights Evaluation Tool, designed to evaluate grant recipients' compliance with federal law including Title VI of the Civil Rights Act of 1964 and 45 CFR part 1110, Nondiscrimination in Federally Assisted Programs. A copy of the proposed information collection request can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the address section below within 60 days from the date of this publication in the **Federal Register**. The NEA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Can help the agency minimize the burden of the collection of information on those who are to respond, including through the electronic submission of responses.

ADDRESSES: Email comments to the Office of Civil Rights and Equal Employment Opportunity (OCREEO), National Endowment for the Arts, at: 202–682–5014 or *CivilRights@arts.gov.*

FOR FURTHER INFORMATION CONTACT: David Travis, Guidelines and Panel Operations Specialist, National Endowment for the Arts, at: 202–682–5001 or *travisd@arts.gov.*

Dated: January 17, 2024.

David Travis,

Specialist, Guidelines and Panel Operations, Administrative Services, National Endowment for the Arts.

[FR Doc. 2024–01097 Filed 1–19–24; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2024–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of January 22, 29, and February 5, 12, 19, 26, 2024. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public and closed.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Betty.Thweatt@nrc.gov* or *Samantha.Miklaszewski@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of January 22, 2024

Tuesday, January 23, 2024

10:00 a.m. Briefing on International Activities (Public Meeting) (Contacts: Jennifer Holzman: 301–287–9090, Doris Lewis 301–287–3794)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Thursday, January 25, 2024

10:00 a.m. Joint Meeting of the Federal Energy Regulatory Commission (FERC) and the Nuclear Regulatory Commission (NRC) (Part 1) (Public Meeting) (Contact: Wesley Held: 301–287–3591)

Additional Information: The meeting will be held at FERC Headquarters, 888 First Street NE, Washington, DC. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://www.ferc.gov/news-events/events/joint-meeting-nuclear-regulatory-commission-and-ferc-01252024.*

12:45 p.m. Joint Meeting of the Federal Energy Regulatory Commission (FERC) and the Nuclear Regulatory Commission (NRC) (Part 2) (Closed—Ex. 1)

Additional Information: The meeting will be held at FERC Headquarters, 888 First Street NE, Washington, DC.

Week of January 29, 2024—Tentative

There are no meetings scheduled for the week of January 29, 2024.

Week of February 5, 2024—Tentative

There are no meetings scheduled for the week of February 5, 2024.

Week of February 12, 2024—Tentative

There are no meetings scheduled for the week of February 12, 2024.

Week of February 19, 2024—Tentative

Thursday, February 22, 2024

9:00 a.m. Update on Research and Test Reactors Regulatory Program (Public Meeting) (Contact: Todd Keene: 301–287–0790)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/*.

Week of February 26, 2024—Tentative

There are no meetings scheduled for the week of February 26, 2024.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov*.

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: January 18, 2024.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2024–01223 Filed 1–18–24; 11:15 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service®.

ACTION: Notice of modified system of records.

SUMMARY: The United States Postal Service® (USPS) is proposing to modify one General Privacy Act System of Records (SOR) to support compliance of the Fair Chance to Compete for Jobs Act of 2019 (Fair Chance Act) which prohibits the Postal Service from inquiring into the criminal history of applicants before a conditional offer of employment has been made.

DATES: These revisions will become effective without further notice on February 21, 2024, unless responses to comments received on or before that date result in a contrary determination.

ADDRESSES: Comments may be submitted via email to the Privacy and Records Management Office, United States Postal Service Headquarters (*USPSPrivacyFedRegNotice@usps.gov*). To facilitate public inspection, arrangements to view copies of any written comments received will be made upon request.

FOR FURTHER INFORMATION CONTACT: Janine Castorina, Chief Privacy and Records Management Officer, Privacy and Records Management Office, via email at *USPSPrivacyFedRegNotice@usps.gov* or 202–268–2000.

SUPPLEMENTARY INFORMATION: This notice is in accordance with the Privacy Act requirement that agencies publish their systems of records in the **Federal Register** when there is a revision, change, or addition, or when the agency establishes a new system of records. The Postal Service has determined that General Privacy Act System of Records, USPS SOR 100.900 Employee Inquiry, Complaint, and Investigative Records, should be revised to promote transparency and support ongoing administrative and compliance activities to meet the Fair Chance Act requirements.

I. Background

The Postal Service must ensure that it is complying with Fair Chance to Compete for Jobs Act of 2019. The Fair Chance Act prohibits the Postal Service from inquiring into the criminal history of applicants before a conditional offer of employment has been made. An applicant who feels their rights under this law have been violated has 30 days from the date of violation to make a complaint to the Postal Service. The Postal Service will conduct a fact-finding investigation within 60 days of a complaint and submit all documents and findings to OPM.

II. Rationale for Changes to USPS Privacy Act Systems of Records

The Postal Service is committed to compliance with the Fair Chance Act. The proposed Privacy Act System of Records updates reflects this commitment to being transparent with the collection and usage of an individual's information as a required result of a formal filing of complaint against the Postal Service if the individual believes the Postal Service inquired into the criminal history of an applicant before a conditional offer of employment has been made.

III. Description of the Modified System of Records

The Postal Service is proposing modifications to USPS SOR 100.900 Employee Inquiry, Complaint, and Investigative Records, in the summary of changes listed below:

- Updated SYSTEM MANAGERS to reflect the current Human Resource title.
- Added one CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM as bullet point #2 to include individuals specifically covered by the Fair Chance Act.
- Updated all three CATEGORIES OF RECORDS IN THE SYSTEM to include specific individual data elements and the full process of investigation to include decision and resolution of complaint.
- Updated administrative information in NOTIFICATION PROCEDURES to include individuals specifically covered by the Fair Chance Act.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed revisions has been sent to Congress and to the Office of Management and Budget (OMB) for their evaluations. The Postal Service does not expect this amended system of records to have any adverse effect on individual privacy rights. USPS SOR 100.900 Employee Inquiry, Complaint, and Investigative Records is provided below in its entirety:

SYSTEM NAME AND NUMBER:

USPS 100.900 Employee Inquiry, Complaint, and Investigative Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

USPS personnel offices; area and district facilities; Post Offices; and contractor sites.

SYSTEM MANAGER(S):

Vice President, Human Resources, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

Vice President, Labor Relations, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 410, 1001, 1005, and 1206.

PURPOSE(S) OF THE SYSTEM:

1. To enable review and response to inquiries and complaints concerning employees and non-employees.

2. To enable management to initiate, review, process, track, and resolve inquiries, complaints, or concerns about the workplace.

3. To support administrative or court litigation and arbitration proceedings.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. USPS employees and non-employees who contact USPS with an inquiry or complaint, and employees and non-employees who are subjects of management inquiries or investigations of workplace issues.

2. Individuals that file or are the subject of a complaint under the Fair Chance to Compete for Jobs Act of 2019 (Fair Chance Act) and related regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. *Employee information:* Name, gender, Social Security number, Employee Identification Number, postal assignment information, veteran status, contact information (work and/or home email, address, phone number), finance number(s), duty location, and pay location.

2. *Non-employee information:* Name, gender, Applicant Identification Number, and contact information (work and/or home email, address, and phone number).

3. *Identification number, and contact information, inquiry, complaint, and investigative information:* Records related to the subject category of inquiry or complaint, assigned case number, background, and description of inquiry, complaint, investigation, decision, and resolution.

RECORD SOURCE CATEGORIES:

Employees, non-employees, supervisors, managers, and witnesses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Standard routine uses 1. through 9. apply. In addition:

a. Records may be disclosed to the National Labor Relations Board (NLRB) in response to its request for investigative purposes, to the extent that the requested information is relevant and necessary.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated database, computer storage media, and paper.

POLICES AND PRACTICES FOR RETRIEVAL OF RECORDS:

By employee and non-employee name, Employee Identification Number, Applicant Identification Number, subject category, facility, finance number, district, area, nationally, or case number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSTAL OF RECORDS:

Records are retained 4 years after response to inquiry, resolution of complaint, or conclusion of investigation.

Records existing on paper are destroyed by burning, pulping, or shredding. Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge.

Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections. Computers are protected by mechanical locks, card key systems, or other physical access control methods.

The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.5.

CONTESTING RECORDS PROCEDURES

See *Notification Procedures* (below) and *Record Access Procedures* (above).

NOTIFICATION PROCEDURES

Employees who want to know if their information is maintained in this system of records must address inquiries to the facility head where currently or last employed.

Headquarters employees must submit inquiries to Corporate Personnel Management, 475 L'Enfant Plaza SW, Washington, DC 20260.

Individuals who file complaints under the Fair Chance Act must submit complaints to National Human Resources at *FairChanceActSupport@usps.gov.*

Non-employees who want to know if their information is maintained in this system of records must address inquiries to the District Manager, Human Resources that governs the facility where the inquiry, complaint, or investigative records are stored. Inquiries must include full name, address, and other identifying information. In addition, employees must include Social Security number or Employee Identification Number, name and address of facility where last employed, and dates of USPS employment. Likewise, employees may also be required to furnish where the inquiry, complaint, or investigation occurred.

EXEMPTIONS PROMULGATED FOR THE SYSTEM

Records in this system that have been compiled in reasonable anticipation of a civil action or proceeding are exempt from individual access as permitted by 5 U.S.C. 552a(d)(5). The USPS has also claimed exemption from certain provisions of the Act for several of its other systems of records at 39 CFR 266.9. To the extent that copies of exempted records from those other systems are incorporated into this system, the exemptions applicable to the original primary system continue to apply to the incorporated records.

HISTORY

January 26, 2018, 83 FR 3777.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2024–00958 Filed 1–19–24; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–185, OMB Control No. 3235–0238]

Submission for OMB Review; Comment Request; Extension: Form N–6F

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously

approved collection of information discussed below.

The title for the collection of information is ''Form N–6F (17 CFR 274.15), Notice of Intent to Elect to be Subject to Sections 55 through 65 of the Investment Company Act of 1940.'' The purpose of Form N–6F is to notify the Commission of a company's intent to file a notification of election to become subject to Sections 55 through 65 of the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''1940 Act''). Certain companies may have to make a filing with the Commission before they are ready to elect to be regulated as a business development company.[1] A company that is excluded from the definition of ''investment company'' by Section 3(c)(1) because it has fewer than one hundred shareholders and is not making a public offering of its securities may lose such an exclusion solely because it proposes to make a public offering of securities as a business development company. Such company, under certain conditions, would not lose its exclusion if it notifies the Commission on Form N–6F of its intent to make an election to be regulated as a business development company. The company only has to file a Form N–6F once.

The Commission estimates that on average approximately 9 companies file these notifications each year. Each of those companies need only make a single filing of Form N–6F. The Commission further estimates that this information collection imposes burden of 0.5 hours, resulting in a total annual PRA burden of 4.5 hours. Based on the estimated wage rate, the total cost to the industry of the hour burden for complying with Form N–6F would be approximately $1,912.50.

The collection of information under Form N–6F is mandatory. The information provided under the form is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by February 21, 2024 to (i) *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: January 17, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–01101 Filed 1–19–24; 8:45 am]

BILLING CODE 8011–01–P

[1] A company might not be prepared to elect to be subject to Sections 55 through 65 of the 1940 Act because its capital structure or management compensation plan is not yet in compliance with the requirements of those sections.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99350; File No. SR–CboeEDGX–2024–006]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

January 16, 2024.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 2, 2024, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II, 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 EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX Options'') proposes to amend its Fee 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/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule for its equity options platform (''EDGX Options'') relating to logical connectivity fees.

By way of background, the Exchange offers a variety of logical ports, which provide users with the ability within the Exchange's System to accomplish a specific function through a connection, such as order entry, data receipt or access to information. The Exchange currently assesses, among other things, the following logical port connectivity fees on a monthly basis: $500 per port for Logical Ports;[3] $500 per port for Multicast PITCH Spin Server Ports (''Spin Ports'') and GRP Ports;[4] and $600 per port for Ports with Bulk Quoting Capabilities[5] (''Bulk Ports''). The Exchange proposes to increase the monthly fees for the forgoing ports to the following rates: $750 per port for Logical Ports, Spin Ports and GRP Ports and $1,000 per port for Bulk Ports. 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, including the Exchange's affiliated options exchanges.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Logical Ports include FIX and BOE ports (used for order entry), drop logical port (which grants users the ability to receive and/or send drop copies) and ports that are used for receipt of certain market data feeds.

[4] Spin Ports and GRP Ports are used to request and receive a retransmission of data from the Exchange's Multicast PITCH data feeds.

[5] Bulk Quoting Capabilities Ports provide users with the ability to submit and update multiple bids and offers in one message through logical ports enabled for bulk-quoting.

[6] *See, e.g.,* Cboe C2 Options Exchange Fee Schedule, Options Logical Port Fees, Cboe BZX Options Exchange Fee Schedule, Options Logical Port Fees and Cboe Exchange Fees Schedule, Logical Connectivity Fees; *see also* The Nasdaq Stock Market Options Pricing Schedule, Section 3 Nasdaq Options Market—Ports and Other Services.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[8] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[9] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with section 6(b)(4)[10] 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 is reasonable as it is still in line with, or even lower than, amounts assessed by other exchanges for similar connections.[11] 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. Additionally, the Exchange believes the proposed fee increase is reasonable in light of anticipated upgrades to the Exchange's matching engines, which is expected to be completed in the first quarter of 2024.

The Exchange also notes market participants may 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 options exchanges to which a market participant may connect in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of any options product, such as within the Over-the-Counter (OTC) markets, which do not require connectivity to the Exchange. Indeed, there are currently 17 registered options exchanges that trade options (13 of which are not affiliated with Cboe), some of which have similar or lower connectivity fees.[12] Based on publicly available information, no single options exchange has more than approximately 17% of the market share.[13] 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, there are 4 exchanges that have been added in the U.S. options markets in the last 5 years (*i.e.,* Nasdaq MRX, LLC, MIAX Pearl, LLC, MIAX Emerald LLC, and most recently MEMX LLC), with a fifth options exchange anticipated to added in 2024 (MIAX Sapphire, LLC).

As for market participants that determine to continue to maintain membership or to join the Exchange for business purposes, those business reasons presumably result in revenue capable of covering the proposed fee. Further, for such market participants that choose to connect to the Exchange, the Exchange believes the proposed fees continue to provide flexibility with respect to how to connect to the Exchange based on each market participants' respective business needs. For example, the amount and type of logical ports are determined by factors relevant and specific to each market participant, including its business model, costs of connectivity, how its business is segmented and allocated and volume of messages sent to the Exchange. Moreover, the Exchange notes that it does not have unlimited system capacity and the proposed fees are also designed to encourage market participants to be efficient with their respective logical port usage. There is also no requirement that any market participant maintain a specific number of logical ports and a market participant may choose to maintain as many or as few of such ports as each deems appropriate.

As noted above, there is no regulatory requirement that any market participant connect to any one options 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 options exchange whose membership includes every registered broker-dealer. By way of example, while the Exchange has 51 members that trade options, Cboe BZX has 61 members that trade options, and Cboe C2 has 52 Trading Permit Holders (''TPHs'') (*i.e.,* members). There is also no firm that is a Member of EDGX Options only. Further, based on previously publicly available information regarding a sample of the Exchange's competitors, NYSE American Options has 71 members,[14] and NYSE Arca Options has 69 members,[15] MIAX Options has 46 members[16] and MIAX Pearl Options has 40 members.[17] Accordingly, excessive fees would simply serve to reduce demand for these products, which market participants are under no regulatory obligation to utilize.

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 respective logical ports. All Members have the option to select any connectivity option, and there is no differentiation among Members with regard to the fees charged for the services offered by the Exchange.

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

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *Id.*

[10] 15 U.S.C. 78f(b)(4).

[11] *See, e.g.*, Cboe C2 Options Exchange Fee Schedule, Options Logical Port Fees, Cboe BZX Options Exchange Fee Schedule, Options Logical Port Fees and Cboe Exchange Fees Schedule, Logical Connectivity Fees *see also* The Nasdaq Stock Market Options Pricing Schedule, Section 3 Nasdaq Options Market—Ports and Other Services.

[12] *Id.*

[13] *See* Cboe Global Markets U.S. Options Market Volume Summary (December 20, 2023), available at *https://markets.cboe.com/us/options/market_statistics/.*

[14] *See https://www.nyse.com/markets/american-options/membership#directory.*

[15] *See https://www.nyse.com/markets/arca-options/membership#directory.*

[16] *See https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Options_Exchange_Members_April_2023_04282023.pdf.*

[17] *See https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Exchange_Members_01172023_0.pdf.*

of the purposes of the Act. The Exchange believes the proposed fee change will not impact intramarket competition because it will apply to all similarly situated market participants equally (i.e., all market participants that choose to purchase the relevant logical ports).

The Exchange believes the proposed fees will not impact intermarket competition because they are also in line with, or even 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 usage of these 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. Indeed, market participants have numerous alternative venues that they may participate on and direct their order flow, including 13 (soon to be 14) non-Cboe affiliated options markets, as well as off-exchange venues, where competitive products are available for trading. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [18] The fact that this market is competitive has also long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[19] Accordingly, the Exchange does not believe its proposed change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [20] and paragraph (f) of Rule 19b–4 [21] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeEDGX–2024–006 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeEDGX–2024–006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeEDGX–2024–006 and should be submitted on or before February 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–01066 Filed 1–19–24; 8:45 am]

BILLING CODE 8011–01–P

[18] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[19] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[20] 15 U.S.C. 78s(b)(3)(A)(ii).

[21] 17 CFR 240.19b–4(f).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–267, OMB Control No. 3235–0272]

Submission for OMB Review; Comment Request; Extension: Rule 11a–2

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995

(44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 11a–2 (17 CFR 270.11a–2) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) permits certain registered insurance company separate accounts, subject to certain conditions, to make exchange offers without prior approval by the Commission of the terms of those offers. Rule 11a–2 requires disclosure, in certain registration statements filed pursuant to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) of any administrative fee or sales load imposed in connection with an exchange offer.

The Commission staff estimates that 657 registrants are governed by Rule 11a–2. Based on this estimate, the total annual burden hours associated with the rule is estimated to be 657 hours. The estimated burden hours associated with rule 11a–2 has decreased by 19 hours from the current allocation of 676 hours. The decrease is due to a decrease in the number of registrants. The estimated external cost associated with this collection of information continues to be $0. The Commission includes the estimated burden of complying with the information collection required by Rule 11a–2 in the total number of burden hours estimated for completing the relevant registration statements and reports the burden of Rule 11a–2 in the separate Paperwork Reduction Act (''PRA'') submissions for those registration statements (see the separate PRA submissions for Form N–3 (17 CFR 274.11b), Form N–4 (17 CFR 274.11c) and Form N–6 (17 CFR 274.11d). The Commission is requesting a burden of one hour for Rule 11a–2 for administrative purposes.

The estimate of average burden hours is made solely for the purposes of the PRA and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules or forms. The information collection requirements imposed by Rule 11a–2 are mandatory. Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by February 21, 2024 to (i) *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov* .

Dated: January 17, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–01102 Filed 1–19–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–236, OMB Control No. 3235–0222]

Submission for OMB Review; Comment Request; Extension: Rule 17f–1

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 17f–1 (17 CFR 270.17f–1) under the Investment Company Act of 1940 (the ''Act'') (15 U.S.C. 80a) is entitled: ''Custody of Securities with Members of National Securities Exchanges.'' Rule 17f–1 provides that any registered management investment company (''fund'') that wishes to place its assets in the custody of a national securities exchange member may do so only under a written contract that must be ratified initially and approved annually by a majority of the fund's board of directors. The written contract also must contain certain specified provisions. In addition, the rule requires an independent public accountant to examine the fund's assets in the custody of the exchange member at least three times during the fund's fiscal year. The rule requires the written contract and the certificate of each examination to be transmitted to the Commission. The purpose of the rule is to ensure the safekeeping of fund assets.

Commission staff estimates that each fund makes 1 response and spends an average of 3.5 hours annually in complying with the rule's requirements. Commission staff estimates that on an annual basis it takes: (i) 0.5 hours for the board of directors [1] to review and ratify the custodial contracts; and (ii) 3 hours for the fund's controller to assist the fund's independent public auditors in verifying the fund's assets. Approximately 8 funds rely on the rule annually, with a total of 8 responses.[2] Thus, the total annual hour burden for Rule 17f–1 is approximately 28 hours.[3]

Funds that rely on Rule 17f–1 generally use outside counsel to prepare the custodial contract for the board's review and to transmit the contract to the Commission. Commission staff estimates the cost of outside counsel to perform these tasks for a fund each year is $1,130.[4] Funds also must have an independent public accountant verify the fund's assets three times each year and prepare the certificate of examination. Commission staff estimates the annual cost for an independent public accountant to perform this service is $10,412.[5] Therefore, the total annual cost burden for a fund that relies on Rule 17f–1 would be approximately $11,542.[6] As noted above, the staff estimates that 8 funds rely on Rule 17f–1 each year, for an estimated total annualized cost burden of $92,336.[7]

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even

[1] Estimates of the number of hours are based on conversations with representatives of mutual funds that comply with the rule; the actual number of hours may vary significantly depending on individual fund assets; the hour burden for Rule 17f–1 does not include preparing the custody contract because that would be part of customary and usual business practice.

[2] Based on a review of Form N–17f–1 filings over the last three years the Commission staff estimates that an average of 8 funds rely on Rule 17f–1 each year.

[3] This estimate is based on the following calculation: (8 respondents × 3.5 hours = 28 hours); the annual burden for Rule 17f–1 does not include time spent preparing Form N–17f–1; the burden for Form N–17f–1 is included in a separate collection of information.

[4] This estimate is based on the following calculation: (2 hours of outside counsel time × $565 = $1,130); the staff has estimated the average cost of outside counsel at $565 per hour, based on information received from funds and their counsel.

[5] This estimate is based on information received from fund representatives estimating the aggregate annual cost of an independent public accountant's periodic verification of assets and preparation of the certificate of examination.

[6] This estimate is based on the following calculation: $1,130 + $10,412 = $11,542.

[7] This estimate is based on the following calculation: (8 funds × $11,542 = $92,336).

a representative survey or study of the costs of Commission rules. Compliance with the collections of information required by Rule 17f–1 is mandatory for funds that place their assets in the custody of a national securities exchange member. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by February 21, 2024 to (i) *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: January 17, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–01125 Filed 1–19–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–578, OMB Control No. 3235–0639]

Submission for OMB Review; Comment Request; Extension: Rule 12d1–4

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rule 12d1–4 (17 CFR 270.12d1–4)under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act'') permits certain registered funds and business development companies (''BDC'') (''acquiring fund') that satisfy certain conditions to acquire shares of other certain registered funds and BDCs (''acquired fund'') in excess of the limits of section 12(d)(1) of the Act without obtaining an exemptive order from the Commission.[1] This collection of information is voluntary because rule 12d1–4 is an exemptive rule and, therefore, funds may choose not to rely on the proposed rule. 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 purpose of the information collection requirement in rule 12d1–4 is to ensure both that the concerns that led Congress to adopt section 12(d)(1) are mitigated and that funds relying upon the rule as an exemption from that section comply with the rule's requirements. The following estimates of average internal burden hours are made solely for purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

Voting Provisions. With respect to voting provisions, Commission staff estimates that 446 acquiring funds will be subject to the requirements in rule 12d1–4(b)(ii), 436 of which will be utilizing mirror voting and 10 of which will be utilizing pass-through voting.[2] With respect to mirror voting, Commission staff estimates that, on average, internal counsel for such funds will spend 3 hours updating proxy voting policies and disclosures for such funds and 3 hours conducting voting procedures. Thus, the staff estimates that the annual hour burden of the collection of information imposed by the mirror voting provisions to be 6 hours per fund, resulting in a total burden of 2,616 hours.[3]

In addition to the mirror voting provisions of the rule, there are some circumstances in which the acquiring funds are the only shareholders of an acquired fund, and in such cases, pass-through voting may be used. Staff estimates that 10 funds will use pass-through voting. Staff estimates that internal counsel for such funds will spend 3 hours updating proxy voting policies and disclosures and 30 hours communicating with shareholders and voting accordingly. Thus, the staff estimates that the annual hour burden of the collection of information imposed by the pass-through provisions to be 33 hours per fund, resulting in a total burden of 330 hours.[4]

Combining the estimates for the mirror voting and pass-through voting calculations, staff estimates that 446 funds will spend a total of 2,946 hours complying with the voting provisions of the rule.[5]

Fund of Funds Investment Agreements. With respect to the fund of funds investment agreement provisions, Commission staff estimates that 12,900 funds that do not have the same investment adviser are subject to the requirement to enter into an agreement prior to the purchase of acquired fund shares in excess of section 12(d)(1)'s limits.[6] Commission staff estimates, however, that the majority of affected funds have already complied with this requirement and staff assumes that, absent structured data to further calculate, 645 funds (5% of affected

[1] *See* 17 CFR 270.12d1–4.

[2] 446 acquiring funds that will invest in open-end funds or UITs in reliance on rule 12d1–4 and beyond the 25% voting threshold = 4,061 series of management companies relying upon rule 12d1–4 or statutory exemption per Form N–CEN items C.7.l and C.7.m (based on data as of December 2022, as derived from N–CEN filings through July 14, 2023) plus 37 acquiring BDCs (consistent with the prior renewal) and multiplied by 11% of acquiring funds that invest in at least one open-end fund or UIT beyond the 25% voting threshold of the rule (as estimated in the prior renewal); this estimate assumes that acquiring funds with current investments in other funds beyond the limits of section 12(d)(1) are subject to rule 12d1–4 at the same rate as the acquiring funds with current investments in other funds within the limits of section 12(d)(1); we lack structured data that would allow us to estimate the percentage of acquiring funds that are within the same group of investment companies as the acquired fund or the acquiring fund's investment sub-adviser or any person controlling, controlled by, or under common control with such investment sub-adviser acts as the acquired fund's investment adviser or depositor, and thus will be subject to the rule's voting condition; to avoid underestimating the costs associated with this aspect of rule 12d1–4, we assume that all the 446 acquiring funds will be subject to the rule's conditions; we estimate that of 10 funds will utilize pass-through voting in limited circumstances; in circumstances where all holders of the outstanding voting securities of the acquired fund are required by rule 12d1–4 or otherwise under section 12(d)(1) to mirror vote the securities of the acquired fund, the acquiring fund may use pass-through instead of mirror voting; it is estimated that (consistent with the prior renewal) 2.2% of acquiring funds that will invest in open-end funds or UITs in reliance on rule 12d1–4 and beyond the 25% voting threshold will use pass-through voting (*i.e.,* 2.2% of 446 acquiring funds equals 10 funds using pass-through voting).

[3] This estimate is based on the following calculations: 2,616 = 6 hours × 436 funds.

[4] This estimate is based on the following calculations: 330 hours (33 hours × 10 funds).

[5] This estimate is based on the following calculations: 446 (436 + 10; combined total of funds using mirror voting and funds using pass-through voting); 2,946 (2,616 hours plus 330 hours).

[6] This estimate is based on the number of acquiring-acquired fund pairs that do not share the same adviser as indicated in form N–PORT data between December 2022 and July 14, 2023 (18,695) and, consistent with the prior renewal, assumes that 69% of such acquiring-acquired fund pairs will be subject to rule 12d1–4 (*i.e.,* 12,900 = 18,695 × 0.69).

funds) would be newly subject to the rule on an annual basis.[7] Commission staff estimates that such newly affected funds will spend 20 hours negotiating and memorializing the necessary agreements. Commission staff further estimates that newly affected funds will spend 6 hours establishing recordkeeping and policies and procedures. Accordingly, staff estimates that the annual burden solely for newly affected funds will be 26 hours.[8] Commission staff further estimates that all affected funds will spend 12 hours on ongoing recordkeeping, resulting in a total annual hour burden of 171,570 hours.[9]

Management Companies—Fund Filings. With respect to the management company fund finding provisions, Commission staff estimates that 2,974 acquired management companies will be subject to rule 12d1–4.[10] Commission staff further estimates that 4,965 acquiring management companies will be subject to rule 12d1–4.[11] This results in 7,939 management companies being subject to rule 12d1–4.[12] Commission staff estimates that such management companies will spend 18 hours conducting evaluations and creating, reviewing, and maintaining written materials pursuant to the rule, resulting in a total annual hour burden of 142,902 hours.[13]

UITs—Principal Underwriter or Depositor Evaluations. With respect to the UIT principal underwriter or depositor evaluations, Commission staff estimates that 541 acquiring UITs will be subject to rule 12d1–4.[14] Commission staff estimates that such UITs will spend 5 hours annually conducting evaluations and creating, reviewing, and maintaining written materials.[15] This results in a total annual hour burden of 2,705 hours.[16]

Separate Accounts Funding Variable Insurance Contracts. With respect to the separate account funding variable insurance contracts, Commission staff estimates that 186 acquiring separate accounts will be subject to rule 12d1–4.[17] Commission staff estimates that separate accounts will spend 4 hours annually obtaining certificates and maintaining records, resulting in a total annual hour burden of 744 hours.[18]

The following estimates of external costs are made solely for purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

Voting Provisions. The staff estimates that, on average, outside counsel will spend 1 hour per vote conducting voting procedures with respect to mirror voting at a cost of $565 per hour. Staff therefore estimates an annual external cost burden of $246,340 with respect to mirror voting.[19] Staff further estimates that, with respect to pass-through voting, outside counsel will spend 1 hour to assist funds in communicating with shareholders and voting accordingly at a rate of $565 per hour. Staff therefore estimates an annual external cost burden of $5,650 with respect to pass-through voting.[20] Accordingly, staff estimates a total annual external cost of $251,990 for compliance with the voting provisions of the rule.[21]

Fund of Funds Investment Agreement. Staff estimates that, on average, for funds newly subject to the rule, outside counsel will spend 2 hours negotiating and memorializing the necessary agreements under the rule at a cost of $565 per hour. Staff further estimates that, on average, for funds newly subject to the rule, outside counsel will spend 4 hours establishing recordkeeping policies and procedures. Accordingly, staff estimates a total annual external costs of $2,186,550 for compliance with the fund of funds investment agreement provisions of the rule.[22]

Management Companies—Fund Filings. It is estimated that there is no external cost burden with respect to the management company findings provisions of the rule.

UITs—Principal Underwriter or Depositor Evaluations. It is estimated that there is no external cost burden with respect to the UIT evaluation provisions of the rule.

Separate Accounts Funding Variable Insurance Contracts. It is estimated that there is no external cost burden with respect to the separate account certification provisions of the rule.

As outlined above, we estimate the total external cost burden to comply with rule 12d1–4 to be $2,438,540.[23]

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by February 21, 2024 to (i) *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE,

[7] This estimate is based on the following calculation: 645 = 12,900 × 0.05.

[8] This estimate is based on the following calculations: 26 hours = 20 + 6.

[9] This estimate is based on the following calculations: 171,570 hours = (26 hours × 645 newly affected funds) + (12 hours × 12,900 affected funds).

[10] 2,974 acquired management companies that will be subject to rule 12d1–4 = 4,310 acquired management companies × 69% of acquired management companies that will be subject to rule 12d1–4 (as estimated in the prior renewal); our calculation assumes that the estimate of acquiring funds that will be subject to rule 12d1–4 is also applicable to acquired funds; 4,310 acquired management companies = 3,170 acquired registered investment companies (based on data as of December 2022, as derived from N–PORT filings through July 14, 2023) × 17,546 registered investment companies (based on data as of December 2022, as derived from N–PORT filings through July 14, 2023)/12,906 management companies (based on data as of December 2022, as derived from N–CEN filings through July 14, 2023); this estimate assumes that acquired management companies with investments from acquiring funds beyond the limits of section 12(d)(1) will be subject to rule 12d1–4 at the same rate as the acquired management companies with investments from acquiring funds within the limits of section 12(d)(1).

[11] 4,965 acquiring management companies that will be subject to rule 12d1–4 = 7,195 acquiring management companies (based on data as of December 2022, as derived from N–PORT filings through July 14, 2023) × 69% of acquiring management companies that will be subject to rule 12d1–4 (consistent with the prior renewal); this estimate assumes that acquiring management companies with current investments in other funds beyond the limits of section 12(d)(1) will be subject to rule 12d1–4 at the same rate as the acquiring management companies with current investments in other funds within the limits of section 12(d)(1) following the rule adoption.

[12] 7,939 = 2,974 + 4,965.

[13] This estimate is based on the following calculations: 142,902 = 18 hours × 7,939 funds.

[14] This estimate assumes that there are 1,353 series of UITs and that 40% of such UITS are acquiring UITs (as estimated in the prior renewal); the estimate of 1,353 series of UITs is based on data as of December 2022, as derived from N–CEN filings (items F.18 and F.19) through July 14, 2023.

[15] This estimate assumes 2.5 hours of general clerk time and 2.5 hours of senior computer operator time. 5 hours = 2.5 + 2.5.

[16] This estimate is based on the following calculations: 2,705 = 5 hours × 541 funds.

[17] 186 acquiring separate accounts that will be subject to rule 12d1–4 = [418 variable annuity separate accounts registered as UITs + 240 variable life insurance separate accounts registered as UITs + 15 management company separate accounts (these figures are based on data as of December 2022, as derived from N–CEN filings through July 14, 2023)] × 40% of funds that are acquiring funds (as estimated in the prior renewal) × 69% of acquiring separate accounts that will be subject to rule 12d1–4 as estimated by a commenter (as estimated in the prior renewal).

[18] This estimate is based on the following calculations: 744 = 4 hours × 186 funds.

[19] $246,340 = ($565 × 1 hour) × 436 funds subject to mirror voting.

[20] $5,650 = ($565 × 1 hour) × 10 funds subject to pass through voting.

[21] $251,990 = $246,340 + $5,650.

[22] $2,186,550 = [($565 × 2) + ($565 × 4)] × 645 funds newly subject to the fund of funds investment agreement provisions of the rule; *see* footnote 7 for the calculation of funds newly subject to the rule.

[23] $2,438,540 = $251,990 + 2,186,550.

Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: January 17, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–01100 Filed 1–19–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the U.S. Securities and Exchange Commission will hold an Open Meeting on Wednesday, January 24, 2024, at 10:00 a.m. (ET).

PLACE: The meeting will be webcast on the Commission's website at *www.sec.gov.*

STATUS: This meeting will begin at 10:00 a.m. (ET) and will be open to the public via webcast on the Commission's website at *www.sec.gov.*

MATTERS TO BE CONSIDERED:

1. The Commission will consider whether to adopt new rules and amendments to enhance disclosures and provide additional investor protections in initial public offerings by special purpose acquisition companies (SPACs) and in subsequent business combination transactions between SPACs and target companies (de-SPAC transactions), and to address investor protection concerns more broadly with respect to shell companies.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: January 17, 2024.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–01207 Filed 1–18–24; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, January 25, 2024.

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: January 18, 2024.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–01225 Filed 1–18–24; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99345; File No. 4–820]

Options Price Reporting Authority; Notice of Filing of Proposed Amendment To Modify Section 5.2(c)(iii) of the OPRA Plan Relating to Dissemination of Exchange Proprietary Data Information

January 16, 2024.

Pursuant to section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 608 thereunder,[2] notice is hereby given that on November 8, 2023,[3] the Cboe BZX Exchange, Inc. (''BZX Options''), Cboe Exchange, Inc. (''Cboe Options''), Cboe C2 Exchange, Inc. (''C2 Options'') and Cboe EDGX Exchange, Inc. (''EDGX Options'') (collectively, the ''Sponsors'' or ''Cboe'') filed with the Securities and Exchange Commission (''Commission'') a proposed amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan'').[4]

The Sponsors state that they have filed the Amendment pursuant to Rule 608(a)(1) under Regulation NMS.[5] Rule 608(a)(1) provides:

> Any two or more self-regulatory organizations, acting jointly, . . . may propose an amendment to an effective national market system plan (''proposed amendment'') by submitting the text of the . . . amendment to the Commission by email, together with a statement of the purpose of such . . . amendment and, to the extent applicable, the documents and information required by paragraphs (a)(4) and (5) of this section.[6]

Section 10.3 (Amendments) of the OPRA Plan, by contrast, provides that the plan ''may be amended from time to time when authorized by the affirmative vote of all of the Members, subject to the approval of the Securities and Exchange Commission,'' [7] and the affirmative vote of all of the Members of the OPRA Plan has not been obtained on the proposed amendment.

The Commission is publishing this notice to solicit comments from interested persons on the proposed Amendment. Set forth below in Section I, which is being published verbatim as filed by the Sponsors, is the statement of the purpose and summary of the Amendment, along with information pursuant to Rule 608(a) under the Act.[8]

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[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] *See* Letter from Corrine Klott, Cboe, to Vanessa A. Countryman, Commission (Nov. 8, 2023) (''Transmittal Letter'').

[4] The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder. *See* Securities Exchange Act Release No. 17638 (Mar. 18, 1981), 22 SEC. Docket 484 (Mar. 31, 1981). The full text of the OPRA Plan and a list of its participants are available at *https://www.opraplan.com/.* The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges.

[5] 17 CFR 242.608(a)(1).

[6] *Id.*

[7] *See* Limited Liability Company Agreement of Options Price Reporting Authority, LLC, Art X, sec. 10.3.

[8] 17 CFR 242.801(a).

I. Requirements Pursuant to Rule 608(a)

1. Statement of Purpose

Executive Summary

Access to high-quality, real-time market data is essential for participation in the financial markets. For this reason, market participants, regulators, and data providers are constantly working to strike a balance between data quality and data expense. Cboe proposes to amend the OPRA Plan in a manner in which it believes will better enable all OPRA Members to expand the amount of proprietary data available to users and consumers of such data, as well as spur innovation and competition for market data. In particular, Cboe believes that the proposed amendments would result in broadening the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The proposed amendment also will promote transparency by facilitating the dissemination of market data more widely through additional distribution channels, which will enable investors to better monitor trading activity on the U.S. options exchanges, support more informed trading and investment decisions, and thereby serve the public interest. To be clear, Cboe firmly believes that these amendments are simply clarifications of what the plain text of the OPRA Plan currently says. But in light of disagreement over the meaning of the current plan, Cboe seeks to make explicit the meaning of the OPRA Plan.

In particular, the Exchange proposes to amend Section 5.2(c)(iii) of the OPRA Plan (''Equivalent Access Provision'') which currently provides that:

(iii) A Member may disseminate its Proprietary Information pursuant to subparagraph (ii) of this paragraph (c) provided that:

(A) such dissemination is limited to other Members and to persons who also have equivalent access to consolidated Options Information disseminated by OPRA for the same classes or series of options that are included in the Proprietary Information. For purposes of this clause (A), ''consolidated Options Information'' means consolidated Last Sale Reports combined with either consolidated Quotation Information or the BBO furnished by OPRA, and access to consolidated Options Information and access to Proprietary Information are deemed ''equivalent'' if both kinds of information are equally accessible on the same terminal or work station; and

(B) a Member may not disseminate its Proprietary Information on any more timely basis than the same information is furnished to the OPRA System for inclusion in OPRA's consolidated dissemination of Options Information.

Background

On July 20, 2001, the Commission approved an amendment to the OPRA Plan which allowed exchanges to provide proprietary data to their members under certain conditions, including a requirement that members have ''equivalent access'' to consolidated options information.[9] Prior to that amendment, OPRA was the exclusive provider of information regarding options quotes and transactions.[10] The Commission noted that the proposed amendments to the OPRA Plan (*i.e.,* adoption of the Equivalent Access Provision) were intended to improve competition.[11] On November 21, 2003, the SEC approved amendments to a number of provisions of the OPRA Plan, including an amendment expanding the scope of who could receive proprietary data to include other ''persons'' in addition to exchange members.[12] Non-substantive changes were made to Section 5.2(c)(iii) when OPRA was reorganized as a limited liability company effective on January 1, 2010, but the substance of the Equivalent Access Provision has otherwise been unchanged since 2003.

Cboe believes that, based on its plain language, subparagraph (A) of the Equivalent Access Provision is satisfied where a recipient of an exchange proprietary data product also is simultaneously authorized and entitled to receive OPRA data in one of the ways that OPRA makes its data available; that is, by maintaining a streaming subscription to the OPRA feed *or* having the ability to query OPRA data on a usage-basis,[13] thereby preserving the Commission's intent to improve competition through the 2001 amendments to the OPRA Plan.

Cboe strongly believes there are several bases that support its reading of the current subparagraph (A) of the Equivalent Access Provision including: the plain reading and unambiguous nature of the language in Equivalent Access Provision; the nature of the current OPRA audit protocols to ensure compliance with Equivalent Access Provision; the language (or lack thereof) included in OPRA market data agreements, policies and fees schedules relating to Equivalent Access and public representations made by other OPRA members since the adoption of the provision in 2001 that are inconsistent with a requirement that a person receiving a proprietary data feed also receive streaming real-time data from OPRA.[14]

[9] *See* Securities Exchange Act Release No. 44580 (July 20, 2001), 66 FR 39218 (July 27, 2001) (SR–OPRA–2001–02).

[10] In 2000 and 2001, the Commission granted ISE and Cboe Options temporary exemptions from the exclusivity requirement. Those exemptions were granted pursuant to Exchange Act Rule 11Aa3–2(f), 17 CFR 240.11Aa3–2(f). *See* letters from Robert L.D. Colby, Deputy Director, Division of Market Regulation, Commission, to Michael J. Simon, Senior Vice President and General Counsel, ISE, dated May 25, 2000 and to Edward J. Joyce, President and Chief Executive Officer, CBOE, dated November 6, 2000. These letters, originally drafted to expire on May 26, 2001, were extended until September 1, 2002. *See* letters from Robert L.D. Colby, Deputy Director, Division of Market Regulation, Commission, to Michael J. Simon, Senior Vice President and General Counsel, ISE, dated May 24, 2001 and to Edward J. Joyce, President and Chief Executive Officer, CBOE, dated May 24, 2001.

[11] *Supra* note [9].

[12] *See* OPRA; Notice of Filing and Order Approving on a Temporary Basis not to Exceed 120 Days a Proposed Amendment to the Plan for Reporting of Consol. Options Last Sale Info. and Amendments No. 1 and 2 Thereto to Revise the Manner in Which the OPRA Engages in Capacity Planning and Allocates its Available Systems Capacity Among the Parties to the Plan, Release No. 34–48822, 2003 WL 22767596[.]

[13] The ''Basic Service'' ''quote packets'' or ''options chains'' made available by OPRA pursuant to the ''Usage-based Vendor Fee'' option in OPRA's Fee Schedule meet the definition of ''consolidated Options Information.'' That ''Basic Service'' includes ''all last sale and quotations information pertaining to equity options and index options, including foreign currency index options.'' *See* OPRA Fee Schedule at 1 and n.1. In addition, the Fee Schedule also states that a ''quote packet'' supplied in response to a usage-based query ''consists of any one or more of the following values: last sale, bid/ask, and related market data for a single series of options or a related index'' and that an ''options chain'' supplied in response to a usage-based query ''consists of last sale, bid/ask, and related market data for up to all series of put and call options on the same underlying security or index.'' Therefore, a person who has access to OPRA's usage-based data service on his or her terminal or work station and can obtain quote packets and options chains has, by definition, equivalent access to ''consolidated Options Information'' because that person will have access to ''Last Sale Reports,'' ''Quotation Information,'' and the ''BBO.''

[14] *See* Securities Exchange Act Release No. 32675 (June 30, 2009), 74 FR 32675 (July 8, 2009) (SR–Phlx–2009–54), in which Nasdaq PHLX, LLC (''PHLX'') states: ''[T]he TOPO data feed offers a competitive, lower-priced *alternative to the consolidated data OPRA feed* for users and situations where consolidated data is unnecessary . . . Additionally, to the extent users can substitute the lower-priced TOPO data for the higher-priced consolidated data feed, those users will have the opportunity to pass the savings on to investors in the form of lower overall trading costs.'' (emphasis added); and *see* Securities Exchange Act Release No. 68576 (January 3, 2013), 78 FR 1886 (January 9, 2013) (SRndash;Phlxndash;2012–145), in which two years later PHLX states ''First, TOPO, TOPO Plus Orders, PHLX Orders and PHLX Depth of Market data feed offer a comprehensive, *competitive alternative to the consolidated data OPRA feed* for users and situations where consolidated data is unnecessary'' (emphasis added). *See also* Securities Exchange Act Release No. 79556 (December 14, 2016), 81 FR 92935 (December 20, 2016) (SR–NASDAQ–2016–167), in which The Nasdaq Stock Market LLC stated: ''[m]any customers that obtain information from OPRA do not also purchase ITTO and BONO, but in cases where customers buy both products, *they*

In March 2023 however, other OPRA Members took a different view and asserted that the Equivalent Access Provision can only be satisfied where a recipient of an exchange proprietary data feed also maintains a streaming subscription to the full OPRA feed (*i.e.,* the ability to query OPRA data on a usage-basis would not be deemed to satisfy the Equivalent Access Provision). Following months of deliberation between OPRA members, OPRA retained counsel, who ultimately provided his interpretation that the Equivalent Access Provision requires a user receiving a streaming, real-time exchange proprietary data product to also receive the full feed of streaming, real-time data from OPRA. On September 6, 2023, the OPRA Management Committee, by majority vote, determined to adopt counsel's interpretation.[15] Cboe believes that the interpretation adopted by the OPRA Management Committee on September 6, 2023 is legally and factually flawed and in opposition to the Commission's intent of the 2001 OPRA amendment. As such, Cboe has decided to propose an amendment that furthers the policy goals stated above by amending the Equivalent Access Provision so it provides that (1) access to OPRA data on a usage-basis will also satisfy the Equivalent Access Provision and (2) impose certain display requirements for both any proprietary market data and consolidated options information.

Proposal

Usage-Based Data Service

Cboe proposes to modify Section 5.2(c)(iii)(A) of the OPRA Plan to clarify that access to consolidated Options Information and access to Proprietary Information are deemed ''equivalent'' if ''Proprietary Information'' and ''consolidated Options Information'' (as those terms are defined in the OPRA Plan), are equally accessible on the same terminal or work station, regardless of whether the OPRA data is disseminated on a streaming or per usage basis. Specifically, Cboe proposes to revise Section 5.2(c)(iii)(A) of the OPRA Plan to replace the sentence the following sentence:

> For purposes of this clause (A), ''consolidated Options Information'' means consolidated Last Sale Reports combined with either consolidated Quotation Information or the BBO furnished by OPRA, and access to consolidated Options Information and access to Proprietary Information are deemed ''equivalent'' if both kinds of information are equally accessible on the same terminal or work station.

with the following sentence:

> For purposes of this clause (A), ''consolidated Options Information'' means consolidated Last Sale Reports combined with either consolidated Quotation Information or the BBO furnished by OPRA, and access to consolidated Options Information and access to Proprietary Information are deemed ''equivalent'' if Proprietary Information and consolidated Options Information, whether disseminated on a streaming- or per usage-basis, are equally accessible on the same terminal or work station.

The new language would clarify that the Equivalent Access Provision is satisfied if a recipient of an exchange proprietary data product also is simultaneously authorized and entitled to receive OPRA data in one of the ways that OPRA makes its data available; that is, by maintaining a streaming subscription to the OPRA feed *or* having the ability to query OPRA data on a usage-basis.

The current Equivalent Access Provision of the OPRA Plan, as interpreted by OPRA, requires that vendors purchase a streaming subscription to the full OPRA feed alongside any exchange proprietary data product. That requirement could be cost-prohibitive or technologically unfeasible when considering the growing and significant bandwidth requirements associated with the full streaming OPRA data feed.[16] This is especially true where vendors or retail brokers are providing such data to individual retail investors who are more likely to be low volume users of market data and do not otherwise have the same best execution obligations as professional users. For such users, query-based access to OPRA data may be more suitable. Moreover, the current interpretation of the Equal Access Provision could have the practical effect of denying choice for individual data subscribers, as compliance with it could be cost-prohibitive for the vendors or retail brokers that support them, effectively leaving OPRA's feed as the only data source for options market participants—even in scenarios where a market participant decides that it does not need consolidated market data for its purposes. Such a result ultimately denies choice for individual data subscribers, which is antithetical to the SEC's longstanding view on competition.

Indeed, when the National Association of Securities Dealers, Inc. (''NASD'') first established a per-query fee structure for U.S. equities, it noted its purpose was ''to provide retail customers with a cost-effective alternative to calling their brokers for current market information.'' [17] As NASD explained, retail investors might not be interested in subscribing to a costly service offered by a commercial vendor which frequently might include analytic information, ticker displays, and dynamically-updated quotation and transaction information.[18] NASD therefore reasoned that the adoption of a query-based fee structure would provide individual investors a better ability to monitor the value of a portfolio, track intra-day activity in a given stock to facilitate an investment decision, or observe a market trend based on periodic queries for the current level of a popular stock index. When approving the proposed fee structure, the Commission similarly acknowledged:

> [the proposed per-query fee structure] and related fee are designed to accommodate the information needs of individual investors, particularly small investors who do not require the breadth of market data and analytic information that institutional investors and market makers typically require. . . . this service will allow firms and vendors to provide individual investors cost-effective access to market data without requiring users to acquire expensive hardware. . . . The NASD's experience is that [subscriber fees and vendor suppled equipment] costs tend to discourage subscription by low-volume users. . . The Commission believes that the $.01/query fee is an equitable allocation of a reasonable fee and that it will be affordable to individual investors. The Commission, therefore, finds

may shift the extent to which they purchase one or the other based on price changes. OPRA constrains the price of ITTO and BONO because no purchaser would pay an excessive price for these products when similar data is also available from OPRA.'' (emphasis added). *See also* NYSE Technology FAQ and Best Practices: Options, Section 6.3 at *https://www.nyse.com/publicdocs/nyse/NYSE_Options_Technology_FAQ.pdf* which is a publicly available document posted by OPRA Members NYSE American LLC and NYSE Arca, Inc. (collectively ''NYSE'') that includes statements inconsistent with the adopted interpretation. Particularly, in a section titled ''How do firms receive proprietary market data'' NYSE states in relevant part: ''[I]in addition, the Exchanges *recommend* that firms utilizing proprietary market data feeds maintain a connection to OPRA, and *have the ability to switch between the proprietary market data feeds and the OPRA feed,* in the event that one or the other fails'' (emphasis added).

[15] BZX Options, C2 Options, Cboe Options, and EDGX Options voted to reject this interpretation.

[16] *See 64e8f2c76de012371925ee11_OPRA_Data_Dissemination_Expansion_from_48_to_96-Line_Multicast_Network_Industry_Test_4.pdf* (website-*files.com*). *See also 64ada60d17c52b49eb5ee42c_OPRA_96-Line_Expansion_Frequently Asked Questions v1.10_071023.pdf* (website-*files.com*).

[17] *See* Securities Exchange Act Release No. 35393 (February 17, 1995), 60 FR 10625 (February 27, 1995) (SR–NASD–95–7).

[18] *Id.*

that the proposal is consistent with the section 15A(b)(5) of the Act.[19]

Although, the Commission's finding related to US equities pricing data, the underlying rationale applies with equal force to the options industry. OPRA's current interpretation of the Equal Access provision is directly at odds with that SEC statement—instead of facilitating cost effective access that will ''accommodate the information needs of individual investors,'' it will disfavor small investors that do not require—and may be unable to pay for or technologically accommodate—a full feed of streaming, real-time data from OPRA.

In addition, when OPRA amended its rules to make usage based access permanently available following a pilot, OPRA stated that ''the availability of these alternative [usage-based] fees has not had *any significant negative impact on OPRA's overall revenues* or on the fair allocation of OPRA's basic service fees to persons who have access to options market information.'' [20] Therefore, the ability to choose the manner in which OPRA data is received (*i.e.,* either via a streaming subscription or on a query basis) to satisfy the Equivalent Access Provision will not harm OPRA's financial position, while at the same time providing the possibility of lower overall costs for US options market data users and permitting them to better evaluate the cost-to-value ratio of obtaining different types of data. In sum, Cboe believes that its proposal will further access to market data generally and will equip investors, including retail investors, with the ability to make informed investment decisions.

Moreover, under Cboe's proposal, all investors receiving exchange proprietary data will continue to have access to OPRA data should they so choose. The only difference is that the proposed amendment will provide subscribers with flexibility to choose the manner in which they are able to view the data. More specifically, since OPRA's usage-based data service allows market participants to obtain quote packets and options chains on their terminal or work station, by definition, that service will still provide equivalent access to ''consolidated Options Information'' because that market participants will have access to ''Last Sale Reports,'' ''Quotation Information,'' and the ''BBO'', as required under the current Equivalent Access Provision.

Cboe also believes absent its proposed amendment, there could be discriminatory application of fees between market participants who choose to subscribe to exchange proprietary data products and those who do not. That discriminatory treatment arises because, absent the proposed amendment, only those market participants who do *not* also subscribe to exchange proprietary market data products may avail themselves of OPRA's potentially more cost-effective usage-based data service. That scenario only serves to penalize those market participants who choose to subscribe to exchange proprietary data products because such participants (unlike those who do not subscribe to proprietary market data products) will be required to also subscribe to, and pay for, the more expensive full streaming OPRA data feed regardless of their needs. As noted, in some cases, retail investors (or the retail brokers that support them) may not be able to afford or technologically process the large size of the full streaming OPRA data; effectively *precluding* this subset of retail investors from accessing proprietary options data at all.

Finally, Cboe believes its proposal fosters pricing competition because it provides users with more choices about what OPRA data to subscribe to, and what, if any, exchange data to subscribe to. That increased choice reduces that possibility that any one market data provider, including OPRA, could charge non-competitive prices for its data. In other words, that proposed amendment would result in a situation where all exchanges, as well as OPRA, would have an incentive to price their market data products based on the value relative to that of other markets, as they would otherwise risk that market participants would not subscribe to their products. As such, exchanges would have to compete on the price or quality of their data (*e.g.,* by offering consistently better quotes) to generate potential subscriber interest in their data. This added incentive to compete, in turn, could enhance liquidity and have a beneficial effect on intermarket competition.

Display Requirement

Cboe also proposes to add a new paragraph to the Equivalent Access Provision: proposed paragraph (C) of Section 5.2(c)(iii) of the OPRA Plan. Proposed paragraph (C) would include two requirements. First, Cboe proposes to require that dissemination of consolidated Options Information for the same classes or series of options that are included in the Proprietary Information must be displayed in a context in which a trading or order-routing decision can be implemented (*i.e.,* the point of order entry or modification). Accordingly, Cboe proposes to add the following requirement: ''dissemination of consolidated Options Information for the same classes or series of options that are included in the Proprietary Information must be displayed in a context in which a trading or order-routing decision can be implemented (*i.e.,* the point of order entry or modification).'' Second, Cboe proposes that consolidated Options Information must also be provided if a registered representative of a broker-dealer provides a quotation to a customer that can be used to assess the current market or the quality of trade execution. Therefore, Cboe proposes to include in proposed paragraph (C) of Section 5.2(c)(iii) the following requirement: that ''Consolidated Options Information must also be provided if a registered representative of a broker- dealer provides a quotation to a customer that can be used to assess the current market or the quality of trade execution.''

Like the Vendor Display Rule [21] that applies to equities market data, Cboe proposes to amend the Equivalent Access Provision to also require a display of consolidated Options Information when it is most needed—when a trading or order-routing decision could be implemented. Additionally, Cboe proposes to clarify in the text of new Section 5.2(c)(iii)(C) of the OPRA Plan that the time when a trading or order-routing decision means at ''the point of order entry or modification.'' As is the case under the Vendor Display Rule, Cboe is not proposing that a display of consolidated data be required when market data is being provided on a purely informational website that does not offer any trading or order-routing capability.

Cboe also proposes to make clear that OPRA ''consolidated Options Information'' must also be provided if a registered representative of a broker-dealer provides a quotation to a customer that can be used to assess the current market or the quality of trade execution. The foregoing requirement codifies guidance provided by the SEC in connection with the Vendor Display Rule.[22]

[19] *See* Securities Exchange Act Release No. 35721 (May 16, 1995), 60 FR 98 (May 22, 1995) (SR–NASD–95–7).

[20] *See* Securities Exchange Act Release No. 37686 (September 16, 1996), 61 FR 49801 (September 23, 1996) (emphasis added).

[21] 17 CFR 242.603.

[22] *See* Denial of No-Action Request under Rule 603(c) of Regulation NMS, from Stephen Luparello, Director, Division of Trading and Markets, SEC, to Eric Swanson, EVP, General Counsel & Secretary

When adopting the Vendor Display Rule, the Commission expressed its view that the NBBO continues to provide a great deal of value for retail investors in assessing the current market for small trades and the quality of execution of such trades.[23] Subsequently, in a 2015 Denial of No-Action Request under Rule 603(c) of Regulation NMS, SEC staff stated their belief that when a registered representative of a broker-dealer provides a quotation to a customer, it is typically done in a context where the customer uses that information to make a trading decision (including a decision regarding whether or not to trade, or the terms of the trade such as a limit price).[24] The SEC therefore stated in its Denial of No-Action Request that it believed that a quotation provided by a registered representative to a customer, which the customer can use to assess the current market or the quality of trade execution, is provided ''in a context in which a trading or order-routing decision can be implemented'' for purposes of the Vendor Display Rule.

The proposed adoption of new subparagraph (C) under Section 5.2(c)(iii) of the OPRA Plan is designed to ensure continuing access to real-time ''consolidated Options Information,'' a long-standing requirement in the securities industry to display consolidated market data at the times when it is most needed. With the recent growth in US options trading, and a large portion of that growth coming from retail investors, it is imperative to continue to empower those investors with cost-effective U.S. options pricing information, along with the ability to choose the manner in which they access such data in accordance with their needs. Cboe believes its proposed display requirements, coupled with the proposal to clarify that OPRA's usage-based data service satisfies the Equivalent Access Provision, will achieve that objective and therefore meets the standard of being appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, and removes impediments to, and perfects the mechanism of, a national market system.[25]

BATS, dated July 22, 2015. The response letter from the staff of the SEC's Division of Trading and Markets is available on the SEC's website.

[23] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37567 (June 29, 2005) (''Regulation NMS Adopting Release'').

[24] *Supra* note [21].

[25] 17 CFR 242.608(b)(2).

2. Text of Amendment

Cboe proposes to modify Section 5.2(c)(iii) of the OPRA Plan. The existing OPRA Plan is available on the OPRA website, *www.opraplan.com,* under the ''Document Library'' tab. The amendments that Cboe is proposing are in attached Exhibit A.

3. Manner of Implementation of Amendment

The proposed amendment will be incorporated into the OPRA Plan following Commission approval of the amendment pursuant to Rule 608(b)(1) and (b)(2) of Regulation NMS.

4. Phases of Development and Implementation

Not applicable.

5. Impact on Competition

Cboe believes that the proposed amendment will impose no burdens on competition that are not justified in light of the purposes of the Act. Rather, for the reasons discussed more fully above, Cboe believes the proposed amendment furthers competition and incorporates what Cboe believes to be the historical interpretation of the Equivalent Access Provision by many market participants across the industry. The proposal to clarify that OPRA's usage-based data services satisfies the Equivalent Access Provision, coupled with the proposed display requirements. would provide investors, particularly retail investors and the retail brokers that support them, with cost- effective U.S. options pricing information, along with the ability to choose the manner in which they access such data in accordance with their needs. Cboe believes that its proposal will further access to market data generally and will equip investors, including retail investors, with the ability to make informed investment decisions.

In particular, Cboe believes that the proposed amendments to the OPRA Plan would avoid an interpretation that would limit access to valuable options market data by imposing a cost prohibitive and/or technologically unfeasible requirement on investors, particularly low volume users like individual retail investors. The proposal also will provide the possibility of lower overall costs for US options market data users and permitting them to better evaluate the cost-to-value ratio of obtaining different types of data. Moreover, the proposed amendment would avoid rendering exchange proprietary market data products redundant, effectively leaving OPRA's feed as the only data source for options market participants such as retail investors. Furthermore, Cboe does not believe that the ability to choose the manner in which OPRA data is received (*i.e.,* either via a streaming subscription or on a query basis) to satisfy the Equivalent Access Provision would harm OPRA's financial position, and therefore would not have an adverse effect on consolidated market data for the options industry.

6. Written Understandings or Agreements Among Plan Members

Not applicable.

7. Approval of Proposed Amendment

Not applicable.

8. Exhibits

Proposed amendments to the OPRA Plan set forth in Exhibit A.

9. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

10. Terms and Conditions of Access

Not applicable.

11. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

12. Method and Frequency of Processor Evaluation

Not applicable.

13. Dispute Resolution

The Plan does not include provisions regarding resolution of disputes between or among the Members.

II. Proposed Revisions to OPRA Plan (Exhibit A to the Amendment)

Additions *italicized;* deletions [bracketed]

Limited Liability Company Agreement of Options Price Reporting Authority, LLC a Delaware Limited Liability Company

* * * * *

Section 5.2. Collection and Dissemination of Options Last Sale Reports and Quotation Information.

* * * * *

(c) *Dissemination of Last Sale Reports, Quotation Information and Other Information.*

* * * * *

(iii) A Member may disseminate its Proprietary Information pursuant to subparagraph (ii) of this paragraph (c) provided that:

(A) such dissemination is limited to other Members and to persons who also have equivalent access to consolidated Options Information disseminated by OPRA for the same classes or series of options that are included in the Proprietary Information. For

purposes of this clause (A), ''consolidated Options Information'' means consolidated Last Sale Reports combined with either consolidated Quotation Information or the BBO furnished by OPRA, and access to consolidated Options Information and access to Proprietary Information are deemed ''equivalent'' if *Proprietary Information and consolidated Options Information, whether disseminated on a streaming- or per usage-basis,* [both kinds of information] are equally accessible on the same terminal or work station; [and]

(B) a Member may not disseminate its Proprietary Information on any more timely basis than the same information is furnished to the OPRA System for inclusion in OPRA's consolidated dissemination of Options Information;[.] *and*

(C) dissemination of consolidated Options Information for the same classes or series of options that are included in the Proprietary Information must be displayed in a context in which a trading or order-routing decision can be implemented (i.e., the point of order entry or modification). Consolidated Options Information must also be provided if a registered representative of a broker-dealer provides a quotation to a customer that can be used to assess the current market or the quality of trade execution.

* * * * *

III. Solicitation of Comments

The Commission seeks comment on the Amendment. Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number 4–820 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 4–820. 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 offices of the Sponsors. 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 4–820 and should be submitted on or before February 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–01071 Filed 1–19–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99351; File No. SR–FINRA–2024–001]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend FINRA Rule 3240 (Borrowing From or Lending to Customers)

January 16, 2024.

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 January 2, 2024, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to amend Rule 3240 (Borrowing From or Lending to Customers) to strengthen the general prohibition against borrowing and lending arrangements, narrow some of the existing exceptions to that general prohibition, modernize the immediate family exception, and enhance the requirements for giving notice to members and obtaining members' approval of such arrangements.

The text of the proposed rule change is available on FINRA's website at *https://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

Background

Rule 3240 generally prohibits, with exceptions, registered persons from borrowing money from or lending money to their customers. The rule has five tailored exceptions, available only when the registered person's member firm has written procedures allowing the borrowing and lending of money between such registered persons and customers of the member, the borrowing or lending arrangements meet the conditions in one of the exceptions[3] and, when required, the registered person notifies the member of a borrowing or lending arrangement, prior to entering into such arrangement, and

[26] 17 CFR 200.30–3(a)(85).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Rule 3240(a)(2)(A) (the ''immediate family exception''); Rule 3240(a)(2)(B) (the ''financial institution exception''); Rule 3240(a)(2)(C) (the ''registered persons exception''); Rule 3240(a)(2)(D) (the ''personal relationship exception''); Rule 3240(a)(2)(E) (the ''business relationship exception'').

obtains the member's pre-approval in writing. The exceptions are for limited situations where the likelihood that the registered person and customer entered into the borrowing or lending arrangement by virtue of the broker-customer relationship is reduced, and the potential risks are outweighed by the potential benefits of allowing registered persons to enter into arrangements with such customers.

Rule 3240 was last amended in 2010, when it became part of the consolidated FINRA rulebook.[4] In August 2019, FINRA launched a retrospective review of Rule 3240, as part of a larger retrospective review of FINRA's rules and administrative processes that help protect senior investors from financial exploitation.[5] In December 2021, FINRA published *Regulatory Notice* 21–43 (''*Notice* 21–43''), which (1) summarized the predominant themes that emerged during the retrospective review of Rule 3240; (2) issued guidance concerning approvals of permissible borrowing or lending arrangements; and (3) based on feedback received during the retrospective rule review, sought comment on proposed amendments to Rule 3240.[6]

Proposed Rule Change

FINRA is proposing to amend Rule 3240 to strengthen the general prohibition against borrowing and lending arrangements, narrow some of the existing exceptions to that general prohibition, modernize the immediate family exception, and enhance the requirements for giving notice to members and obtaining members' approval of such arrangements.[7]

The General Prohibition on Borrowing From or Lending to Customers

Rule 3240 generally prohibits registered persons from borrowing from or lending to their customers. To make this regulatory purpose more prominent, the proposed rule change would amend the rule's title from ''Borrowing From or Lending to Customers'' to ''Prohibition on Borrowing From or Lending to Customers,'' and change the title of Rule 3240(a) from ''Permissible Lending Arrangements; Conditions'' to ''General Prohibition; Permissible Borrowing or Lending Arrangements; Conditions.'' These changes would emphasize that the rule is, first and foremost, a general prohibition.

In addition, the proposed rule change would strengthen this general prohibition in three ways. First, Rule 3240(a) would be amended to clarify that the rule's general requirements concerning borrowing and lending arrangements—including the general prohibition—apply to arrangements that pre-exist a new broker-customer relationship. Currently, Rule 3240(a) begins, ''[n]o person associated with a member in any registered capacity may borrow money from or lend money to any customer of such person . . . .'' FINRA is proposing to amend this introductory clause in Rule 3240(a) to also prohibit registered persons from initiating a broker-customer relationship with a person with whom the registered person has an existing borrowing or lending arrangement.

Second, FINRA is proposing to add Rule 3240.02 (Customer). Proposed Rule 3240.02 would define ''customer'' to include, for purposes of Rule 3240, any customer that has, or in the previous six months had, a securities account assigned to the registered person at any member. This would extend the rule's limitations to borrowing or lending arrangements entered into within six months after a broker-customer relationship terminates. This proposed definition would align with the definition of ''customer'' in FINRA Rule 3241 (Registered Person Being Named a Customer's Beneficiary or Holding a Position of Trust for a Customer), a rule that addresses similar types of conflicts.[8]

Third, FINRA is proposing to add Rule 3240.05 (Arrangements with Persons Related to Either the Registered Person or the Customer). Proposed Rule 3240.05 would extend the rule's requirements to borrowing or lending arrangements that involve similar conflicts as ones presented by arrangements directly between registered persons and their customers. Specifically, proposed Rule 3240.05 would provide that ''[a] registered person instructing or asking a customer to enter into a borrowing or lending arrangement with a person related to the registered person (*e.g.,* the registered person's immediate family member or outside business) or to have a person related to the customer (*e.g.,* the customer's immediate family member or business) enter into a borrowing or lending arrangement with the registered person would present similar conflict of interest concerns as borrowing or lending arrangements between the registered person and the customer and would not be consistent with this Rule [3240] unless the conditions set forth in [Rule 3240(a)(1), (2), and (3)] are satisfied.'' [9] This would address the potential for customer abuse that arises when a registered person induces a customer to enter into a borrowing or lending arrangement with a person or entity related to the registered person or, likewise, induces a customer to have a person or entity related to the customer enter into an arrangement with the registered person.[10]

In addition, FINRA is proposing to add Rule 3240.03 (Owner-Financing Arrangements) to expressly state that, for purposes of Rule 3240, borrowing or lending arrangements include owner-financing arrangements. For example, Rule 3240 would apply to situations where a registered person purchases real estate from his customer, the customer agrees to finance the purchase, and the registered person provides a promissory note for the entire purchase price or arranges to pay in installments.[11]

The ''Immediate Family'' Definition

One of the few exceptions to Rule 3240's general prohibition is for borrowing or lending arrangements with a customer who is a member of the registered person's immediate family.[12] Currently, Rule 3240(c) defines ''immediate family'' to mean ''parents, grandparents, mother-in-law or father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, children, grandchildren, cousin, aunt or uncle, or niece or nephew, and any other person

[4] *See Regulatory Notice* 10–21 (April 2010).

[5] *See Regulatory Notice* 19–27 (August 2019). In October 2020, FINRA published a report that summarized other aspects of that retrospective rule review. *See Regulatory Notice* 20–34 (October 2020).

[6] In *Notice* 21–43, FINRA also discussed some similarities and differences between Rule 3240 and the federal and state regulatory approaches for investment advisers and their supervised persons, and encouraged a broader dialogue about whether a more uniform regulatory approach would enhance investor protection.

[7] Where appropriate in context, FINRA refers herein to ''borrowing and lending'' rather than ''borrowing or lending.'' No references to ''borrowing and lending,'' however, should be interpreted to mean that Rule 3240 only applies to arrangements that have both a borrowing component and a separate lending component. Rule 3240 generally prohibits registered persons from borrowing money from *or* lending money to a customer.

[8] *See* Rule 3241.01 (Customer).

[9] The conditions in Rule 3240(a)(1), (2) and (3) are that the member has written procedures allowing the borrowing or lending of money between registered persons and customers; the borrowing or lending arrangement meets one of the conditions; and the notification and approval requirements are satisfied.

[10] Proposed Rule 3240.05 is based, in part, on feedback received during the retrospective review that some registered persons attempt to circumvent Rule 3240 by structuring arrangements with persons related to the registered person or the customer.

[11] *See, e.g.,* James K. Breeze, Letter of Acknowledgment, Waiver and Consent, Case ID 2008012846501 (June 30, 2009); Vincenzo G. Covino, Letter of Acknowledgment, Waiver and Consent, Case ID 2009020793901 (Feb. 9, 2012).

[12] *See* Rule 3240(a)(2)(A).

whom the registered person supports, directly or indirectly, to a material extent.''

During the retrospective review of Rule 3240, FINRA received feedback that the definition of ''immediate family'' should be modernized. The proposed rule change would modernize the ''immediate family'' definition to match the definition of the same term in Rule 3241, which also has exceptions for situations in which the customer is a member of the registered person's immediate family.[13] Specifically, the proposed rule change to Rule 3240(c) would replace ''husband or wife'' with ''spouse or domestic partner'' and amend the definition so that it ''includes step and adoptive relationships.'' In addition, the ''any other person'' clause would be revised to be limited to ''any other person who resides in the same household as the registered person and the registered person financially supports, directly or indirectly, to a material extent.''

The Personal Relationship and Business Relationship Exceptions

Currently, two exceptions to the rule's general prohibition are for arrangements based on (1) a ''personal relationship with the customer, such that the loan would not have been solicited, offered, or given had the customer and the registered person not maintained a relationship outside of the broker-customer relationship''; and (2) a ''business relationship outside of the broker-customer relationship.'' [14] Due to concerns expressed during the retrospective review of Rule 3240 that the personal relationship exception may be exploited—and to make more clear what kinds of personal relationships would be within the exception—FINRA proposes to narrow the personal relationship exception to arrangements that are based on a ''bona fide, close personal relationship between the registered person and the customer maintained outside of, and formed prior to, the broker-customer relationship.'' [15] This language would replace the requirement that ''the loan would not have been solicited, offered, or given had the customer and the registered person not maintained a relationship outside of the broker-customer relationship'' to narrow the scope of the exception and clarify the types of relationships that would be within the exception. For similar reasons, FINRA proposes to amend the business relationship exception to be limited to arrangements that are based on a ''bona fide business relationship outside of the broker-customer relationship.'' [16]

In addition to narrowing the personal relationship and business relationship exceptions, FINRA is proposing to add Rule 3240.04 (Close Personal Relationships; Business Relationships), which would provide factors for evaluating whether a borrowing or lending arrangement is based on a close personal relationship or a business relationship. The proposed factors would include, but would not be limited to, when the relationship began, its duration and nature, and any facts suggesting that the relationship is not bona fide or was formed with the purpose of circumventing the purpose of Rule 3240. Proposed Rule 3240.04 is intended to help establish the scope of the close personal relationship and business relationship exceptions, focus on the most relevant factors when evaluating whether a close personal relationship or business relationship exists, and ensure that members consider meaningfully the potential issues involved in the proposed arrangement.

To provide even more guidance about the scope of the close personal relationship and business relationship exceptions, proposed Rule 3240.04 would also provide illustrative examples of these relationships. Specifically, it would provide that examples of relationships that are close personal relationships include, but are not limited to, a childhood or long-term friend, a godparent, and other similarly close relationships. Additionally, proposed Rule 3240.04 would provide that an example of a business relationship includes, but is not limited to, a loan from a registered person to a small outside business that the registered person co-owned for years for the sole purpose of providing the business with additional operating capital.[17]

Notification and Approval Requirements

The proposed rule change would also amend Rule 3240's notification and approval requirements. Currently, Rule 3240(b) contains notification and approval requirements for borrowing or lending arrangements within the five exceptions, which vary depending on which exception applies. With respect to the personal relationship, business relationship, and registered persons exceptions, Rule 3240(b)(1) provides that a registered person shall notify the member of borrowing or lending arrangements prior to entering into such arrangements, and that the member shall pre-approve in writing such arrangements.[18] With respect to the immediate family member exception, Rule 3240(b)(2) provides, in pertinent part, that a member's written procedures may indicate that registered persons are not required to notify the member or receive member approval. With respect to the financial institution exception, Rule 3240(b)(3) provides, in pertinent part, that a member's written procedures may indicate that registered persons are not required to notify the member or receive member approval, provided that ''the loan has been made on commercial terms that the customer generally makes available to members of the general public similarly situated as to need, purpose and creditworthiness.''

FINRA is proposing several amendments to all these notification and approval requirements. First, FINRA is proposing to amend Rule 3240(b)(1) to clarify that, although registered persons are required to obtain the member's prior approval of arrangements within the close personal relationship, business relationship, or registered persons exceptions, the member is not required to approve such arrangements. As explained above, Rule 3240(b)(1) currently provides that the member ''shall pre-approve'' such arrangements, which could imply incorrectly that the member must approve the arrangement or modification and may not disapprove it. To preclude this incorrect interpretation, the proposed rule change would delete the ''shall pre-approve'' language and instead require the

[13] *See* Rule 3241(a)(1)(A) and (a)(2)(A) and (c).

[14] *See* Rule 3240(a)(2)(D) and (E). Although Rule 3240(a)(2)(D) and (E) refer to ''the lending arrangement,'' and do not explicitly mention a ''borrowing arrangement,'' these exceptions are not intended to exclude borrowing arrangements. FINRA therefore proposes a technical amendment to make clear that those exceptions apply to ''borrowing or lending'' arrangements based on a personal relationship or a business relationship.

[15] Where appropriate in context, FINRA refers herein to proposed Rule 3240(a)(2)(D) as the ''close personal relationship exception.'' *See also supra* note 3 (defining current Rule 3240(a)(2)(D) as the ''personal relationship exception'').

[16] The term ''bona fide'' in the close personal relationship and business relationship exceptions was not included in the proposal in *Notice* 21–43. FINRA proposes to add the term ''bona fide'' to emphasize that for either of these exceptions to apply, the close personal relationship or business relationship must be legitimate. Adding the term ''bona fide'' would also align with language in proposed Rule 3240.04, discussed below.

[17] The proposal in *Notice* 21–43 did not include an illustrative example of a business relationship in proposed Rule 3240.04. It has been added in response to comments to *Notice* 21–43 requesting examples of relationships within that exception.

[18] Rule 3240(b)(1) contains similar notification and approval requirements for modifications to borrowing or lending arrangements.

registered person to provide the member with notice of the arrangements or modifications ''prior to entering into such arrangements'' or ''prior to the modification of such arrangements'' and ''obtain the member's approval.'' [19]

The proposed rule change would also amend the notification and approval requirements that apply to borrowing or lending arrangements within the registered persons, personal relationship and business relationship exceptions, to correspond with the proposed amendments that would clarify that the general prohibition applies to pre-existing arrangements. Specifically, proposed Rule 3240(b)(1)(B) would require registered persons, prior to the initiation of a broker-customer relationship at the member with a person with whom the registered person has an existing borrowing or lending arrangement, to notify the member in writing of existing arrangements within the registered persons, personal relationship and business relationship exceptions and obtain the member's approval in writing of the broker-customer relationship.[20]

Further, the proposed rule change would require that all notices required under Rule 3240 be in writing and retained by the member. Currently, Rule 3240 does not specify that notice must be given in writing, and the record-retention provision in Rule 3240.01 requires members only to preserve written approvals. The proposed rule change would require registered persons to give written notice and require members to preserve records of such written notice for at least three years.[21]

The proposed rule change would also amend the provisions that address notice and approval of arrangements within the immediate family and financial institution exceptions, to correspond with the proposed amendments that would clarify that the general prohibition applies to arrangements that pre-exist the broker-customer relationship. Currently, under Rule 3240(b)(2) and (3), the member's written procedures may indicate that registered persons are not required to notify the member or receive member approval of arrangements within the immediate family exception or arrangements within the financial institution exception that meet the additional conditions set forth in Rule 3240(b)(3). To extend these provisions to pre-existing arrangements, the proposed rule change would amend Rule 3240(b)(2) and (3) to provide that the member's procedures may also indicate that registered persons are not required to notify the member or receive member approval of such arrangements either prior to or subsequent to initiating a broker-customer relationship.

Finally, in response to comments received in response to *Notice* 21–43, the proposed rule change would establish new obligations on a member when receiving notice of a borrowing or lending arrangement. Specifically, FINRA is proposing to add Rule 3240.06 (Obligations of Member Receiving Notice). Proposed Rule 3240.06 would provide that upon receiving written notice under Rule 3240, the member shall perform a reasonable assessment of the risks created by the borrowing or lending arrangement with a customer, modification to the borrowing or lending arrangement with a customer, or existing borrowing or lending arrangement with a person who seeks to be a customer of the registered person. It would further provide that the member shall also make a reasonable determination of whether to approve the borrowing or lending arrangement, modification to the borrowing or lending arrangement, or, where there is an existing borrowing or lending arrangement with a person who seeks to be a customer of the registered person, the broker-customer relationship. Proposed Rule 3240.06 would be similar to Rule 3241(b)(1), which requires members to perform a ''reasonable assessment'' and ''reasonable determination'' when receiving notice of a registered person being named a customer's beneficiary or holding a position of trust for a customer, and to supplementary material to FINRA Rule 3270 (Outside Business Activities of Registered Persons) that provides factors members must consider upon receiving written notice of an outside business activity.[22]

FINRA intends that a member's ''reasonable assessment'' and ''reasonable determination'' for purposes of proposed Rule 3240.06 would be informed by guidance that FINRA has already provided to members in *Notice* 21–43.[23] Specifically, FINRA expects that a member's ''reasonable assessment'' would take into consideration several factors, such as:

(1) any potential conflicts of interest in the registered person being in a borrowing or lending arrangement with a customer;

(2) the length and type of relationship between the customer and registered person;

(3) the material terms of the borrowing or lending arrangement;

(4) the customer's or the registered person's ability to repay the loan;

(5) the customer's age;

(6) whether the registered person has been a party to other borrowing or lending arrangements with customers;

(7) whether, based on the facts and circumstances observed in the member's business relationship with the customer, the customer has a mental or physical impairment that renders the customer unable to protect his or her own interests;

(8) any disciplinary history or indicia of improper activity or conduct with respect to the customer or the customer's account (*e.g.,* excessive trading); and

(9) any indicia of customer vulnerability or undue influence of the registered person over the customer.

This list is not intended to be exhaustive. Moreover, while a listed factor may not be applicable to a particular situation, the factors that a member considers should allow for a reasonable assessment of the associated risks so that the member can make a reasonable determination of whether to approve the borrowing or lending arrangement, modification to the borrowing or lending arrangement, or, where there is an existing borrowing or lending arrangement with a person who seeks to be a customer of the registered person, the broker-customer relationship. FINRA does not expect a registered person's assertion that the registered person or the customer has no viable alternative person from whom to

[19] *See* proposed Rule 3240(b)(1)(A).

[20] In such situations, if the member does not approve the formation of a broker-customer relationship with the registered person who provided such notice, the customer would still be permitted to seek to initiate a broker-customer relationship with another registered person at the same member.

[21] *See* proposed amendments to Rule 3240(b)(1)(A) and (b)(1)(B) and Rule 3240.01. Rule 3240.01 would also be amended to provide that the record-retention requirements are for purposes of Rule 3240(b), not just Rule 3240(b)(1). As explained above, Rule 3240(b)(1) requires notice and approval of arrangements that are within the personal relationship, business relationship, and registered persons exceptions. While Rule 3240(b)(2) and (3) do not expressly require notice and approval of arrangements within the immediate family member and financial institution exceptions, those subparagraphs imply that members may choose to require such notice and approval of those arrangements.

[22] *See* Rule 3270.01 (Obligations of Member Receiving Notice).

[23] FINRA has explained that this guidance was similar to general guidance that FINRA had published concerning the ''reasonable assessment'' and ''reasonable determination'' requirements in Rule 3241. *See Notice* 21–43, at n.21 (citing Rule 3241(b)(1), *Regulatory Notice* 20–38 (October 2020), and Securities Exchange Act Release No. 89218 (July 2, 2020), 85 FR 41249, 41251 (July 9, 2020) (Notice of Filing of File No. SR–FINRA–2020–020)).

borrow money to be dispositive in the member's assessment. If possible, as part of the member's reasonable assessment of the risks, FINRA would expect a member to try to discuss the arrangement with the customer.[24]

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice.*

2. Statutory Basis

FINRA believes the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[25] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA believes that, by strengthening and modernizing Rule 3240, the proposed rule change would enhance investor protection. The proposed rule change would reduce risks to investors through incremental adjustments that strengthen the general prohibition against borrowing and lending arrangements and narrow the few exceptions to the rule. In addition, the proposed rule change would facilitate compliance by clarifying the scope of the general prohibition and the personal relationship and business relationship exceptions.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to further analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs, benefits, and distributional and competitive effects relative to the current baseline, and the alternatives FINRA considered in assessing how best to meet its regulatory objective.

(a) Regulatory Need

Rule 3240 generally prohibits registered persons from borrowing from or lending to their customers except when certain conditions are met, as specified in Rule 3240 and described above. Anecdotal evidence from member firms, law clinics, and previous enforcement cases—as well as FINRA's experience in examining and enforcing for compliance with Rule 3240—suggests that there is some ambiguity about the scope of Rule 3240 and certain risks to investors due to conflicts of interest and the superior information that registered persons have about potential risks and returns. As discussed further below, the proposed rule change would reduce ambiguity and aim to mitigate these risks.

(b) Economic Baseline

The economic baseline for the proposed rule change is Rule 3240, members' existing internal procedures regarding borrowing from or lending to a customer, and the extent of investor protection and market efficiency that result. As of the end of 2022, there were 620,882 registered persons and 3,378 registered member firms that would be covered by the proposed rule change, in addition to the registered persons' customers.[26]

Absent Rule 3240, borrowing or lending arrangements between registered persons and their customers would likely be more widespread and riskier due to conflicts of interest and the superior information that registered persons have about potential risks and returns. Rule 3240 generally prohibits these arrangements, and it establishes processes that may help mitigate the potential conflicts of interest in those arrangements that are within the exceptions. In this regard, registered persons may not enter into borrowing or lending arrangements that are within the rule's exceptions unless the registered person's member firm has written procedures allowing the borrowing or lending of money between such registered persons and their customers, and unless the registered person complies with any applicable notification and approval requirements. Members may adopt procedures that are stricter than Rule 3240. However, for purposes of conducting an economic analysis, FINRA does not have comprehensive information readily available about members' borrowing or lending policies or practices.

To understand the potential harm from impermissible borrowing or lending arrangements, FINRA reviewed final FINRA enforcement cases that involved findings of Rule 3240 violations. Between January 2018 and December 2021, there were an average of 15 such enforcement cases per year, totaling 58 cases over the four-year period.[27] The number of cases year over year did not display a noticeable trend. The customer was the borrower in only one of the cases, and the registered person was the borrower in the other 57 cases. The amounts of borrowed or lent money ranged from $1,800 to $1,350,000, with a mean of $163,509 and a median of $70,000.

Customer harm occurs if a loan from the customer is not repaid according to its terms,[28] or if the terms of the loan are substantially worse when compared to prevailing market terms for loans to comparable borrowers. In the enforcement cases in the review period, the customers were often repaid, though it is uncertain whether they were repaid according to the terms of the loan or how those terms would have compared to prevailing market terms. FINRA notes the number of enforcement cases does not represent all violations of Rule 3240 that may have occurred, and thus, does not provide a complete picture of the economic baseline of customer harm.

FINRA also reviewed disclosures on Forms U4 and U5 of consumer-initiated, investment-related arbitrations, civil litigation or customer complaints (written or oral) that included allegations related to a registered person (or former registered person) borrowing money from or lending money to a customer. This information complements the information from the enforcement cases regarding the potential harm caused by impermissible borrowing or lending arrangements, although the disclosures do not necessarily indicate whether or how Rule 3240 was violated. From 2018 to 2021, there was a total of 100 such disclosures over the four-year period, which averaged to 23 disclosures per year. The number of such disclosures declined from 38 in 2018 to 19 in 2021. In 28 of the total 100 identified disclosures, the amount of the compensatory damages claim was not

[24] FINRA notes that the proposed rule change would impact members that have elected to be treated as capital acquisition brokers (''CABs''), given that the CAB Rules incorporate the impacted FINRA rule by reference.

[25] 15 U.S.C. 78*o*–3(b)(6).

[26] *See* 2023 FINRA Industry Snapshot, *https://www.finra.org/sites/default/files/2023-04/2023-industry-snapshot.pdf.* There is no data of the number of customers of the registered member firms.

[27] The number of enforcement cases includes the FINRA disciplinary actions that resulted in a Letter of Acceptance, Waiver, and Consent (AWC), an Order Accepting Settlement (OAS), or a decision issued by FINRA's Office of Hearing Officers, and that resulted in findings that the respondent violated Rule 3240. The number does not include matters resulting in Cautionary Action.

[28] ''Not repaid according to its terms'' could include, but is not limited to, situations in which a customer is not repaid in full or not repaid at the interest rate or by the date agreed upon.

known.[29] In the remaining 70 disclosures excluding two outliers,[30] the alleged compensatory damages claims ranged from $1,800 to $3.7 million, with a mean of $224,760 and a median of $94,600. Fifty-three of the 100 disclosures resulted in settlements, which ranged from $1,800 to $1.3 million. Five of the disclosures resulted in an arbitration award between $2,000 and $150,000. One disclosure resulted in a civil judgment of $85,000.

The extent to which data concerning these consumer-initiated events may inform an economic baseline has some limitations. First, some disclosures allege harm caused by conduct *in addition to* borrowing from or lending to a customer, such as recommending unsuitable investments, so FINRA is unable to determine how much of the alleged harm derives from allegations related to borrowing or lending. Second, the alleged compensatory damages could be a poor proxy for measuring customer harm because the disclosures did not specifically mention the borrowed amounts or have details about whether the loan was repaid, and because nearly all alleged compensatory damages claims were not adjudicated. Nevertheless, to the extent some of the disclosures are of settlements, awards or judgments, those provide a better gauge of the potential customer harm than mere allegations of compensatory damages. Thus, the disclosure data provides a perspective, in addition to the enforcement data, on the prevalence and the scope of borrowing or lending arrangements between registered persons and customers.

To supplement the quantitative analysis above, FINRA also considered its own experience with examining and enforcing for compliance with Rule 3240. Specifically, FINRA is concerned that some registered persons attempt to circumvent the current rule, using tactics such as timing a borrowing or lending arrangement to be entered into after terminating a broker-customer relationship, using other nominal borrowers such as a spouse or business entity of the registered person, or claiming a personal relationship that is not bona fide. For example, FINRA has detected instances in which the registered person re-assigned the customer to another registered person and then immediately entered into a borrowing arrangement with the former customer. These kinds of arrangements present the same kinds of conflicts of interest that Rule 3240 is intended to address, and, as such, also inform the economic baseline.

(c) Economic Impact

By extending the coverage of the rule's general prohibition, narrowing some exceptions, and clarifying certain aspects of the rule, the proposed rule change would result in fewer attempts by registered persons to enter into impermissible arrangements. For example, the expected cost of attempting to enter into a borrowing or lending arrangement that is not within the exceptions would be higher, as the likelihood of getting caught would increase when members, registered persons and customers have better information about permitted arrangements. Further, by reducing ambiguity regarding permissible borrowing or lending arrangements, a registered person who currently avoids a permissible and mutually beneficial borrowing or lending arrangement may be more comfortable entering into such an arrangement because of the proposed rule change.

The proposed rule change would prohibit some arrangements that are allowed under the current rule. For example, the general prohibition does not currently extend to arrangements entered into within six months after a broker-customer relationship ends; under the proposed rule change, it would. Additionally, the proposed rule change would narrow the personal relationship exception, prohibiting some of the arrangements that are permissible under the current rule. FINRA recognizes, however, that the proposed rule change may preclude arrangements that could be mutually beneficial to customers and registered persons and superior to alternative opportunities for borrowing or lending. Furthermore, requiring members to make a reasonable assessment of the risks and a reasonable determination of whether to approve the arrangement or new broker-customer relationship, as the case may be, may lead some members to disallow these arrangements altogether to avoid the cost of making the required assessments and determinations.

The long-term net impact of the proposed rule change on members' compliance costs is less clear. The proposed rule change would likely reduce registered persons' attempts to borrow based on the close personal relationship exception. Further, with the proposed modernized definition of ''immediate family,'' some arrangements that are currently within the personal relationship exception would instead be within the immediate family exception, of which members could choose not to require notification or approval. On the other hand, by clarifying that the rule covers arrangements that pre-exist the initiation of a broker-customer relationship and extending the rule six months after a broker-customer relationship is terminated, members would start receiving notice of the kinds of arrangements of which they are not currently receiving notice and would be required to evaluate whether to approve the arrangement or a new broker-customer relationship, as applicable. Additionally, members may incur additional costs of supervising and monitoring due to the extended time period that the proposed rule change covers. The extent of net savings or costs to members for compliance would depend on the relative prevalence of such cases and the additional monitoring costs.

The proposed rule change requiring members that receive notice of an arrangement to perform a reasonable assessment of the risks created by the arrangement could also raise members' compliance costs in the long term to the extent that members are not currently conducting these assessments. While the current rule requires members, upon receiving notice of an arrangement, to approve the arrangement in writing, the current rule does not require members to conduct a reasonable assessment of the risks of the arrangement prior to giving approval. Some members may already have a robust assessment process while some may have to adjust their process to comply with the proposed rule change. As a result, the compliance cost of the approval process for members that would have to make the adjustments could increase.

Members may also incur increased compliance costs in the short term. Specifically, members may need to update their written procedures in light of the proposed rule change given that Rule 3240 prohibits all arrangements unless the member has procedures permitting them. Members may also have to re-train their staff to become aware of the extended prohibitions, the modernized definition of ''immediate family,'' the proposed factors to consider for arrangements based on close personal relationships and business relationships, and the ''reasonable assessment'' and ''reasonable determination'' requirements. While the proposed rule

[29] For example, in one disclosure, a family member filed the complaint on behalf of a deceased customer without knowing the exact amount borrowed.

[30] In two disclosures, the alleged compensatory damages were $20 million and $43 million, both of which are more than three standard deviations from the mean. FINRA removed these data points in calculating the mean and median to avoid biases caused by outliers.

change would not apply retroactively, as discussed below, members may elect to re-evaluate previously approved arrangements under the proposed rule change. Additionally, members may choose to respond to the proposed rule change by reviewing their current registered persons' borrowing or lending arrangements with their current and previous customers, to the extent they have not already done so.

For members that are not already maintaining written notices and approvals of borrowing or lending arrangements that the proposed rule change would require, there would be additional operational costs. However, FINRA expects the incremental costs to be minimal, as the costs of making and keeping written records are trivial with digital technology.

(d) Alternatives Considered

FINRA considered generally prohibiting all borrowing or lending arrangements between registered persons and customers and eliminating the existing exceptions. FINRA does not propose a complete prohibition for several reasons. As an initial matter, Rule 3240 already contains a general prohibition, and the proposed rule change would strengthen it, by clarifying that it applies to pre-existing arrangements, extending the time period over which the rule would apply, adopting supplementary material that addresses conduct by registered persons regarding arrangements with persons related to the registered person or to the customer, and narrowing some exceptions.

Moreover, as discussed below, FINRA determined that the enumerated exceptions in Rule 3240, with the proposed rule change described above, are for limited situations where the likelihood that the registered person and customer entered into the borrowing or lending arrangement by virtue of the broker-customer relationship is reduced, and the potential risks are outweighed by the potential benefits of allowing registered persons to enter into arrangements with such customers. *See* discussion *infra* section C.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in *Notice* 21–43. Six comments were received in response to *Notice* 21–43. A copy of *Notice* 21–43 appears in Exhibit 2a. Copies of the comment letters received in response to *Notice* 21–43 appear in Exhibit 2b. Of the six comment letters received, three were in favor of the proposed rule change,[31] two were opposed,[32] and one raised issues that were beyond the scope of Rule 3240.[33]

The comments and FINRA's responses are set forth in detail below.

General Support for the Proposal

Three commenters expressed support for the proposal in *Notice* 21–43.[34] SIFMA noted that the proposal would provide greater clarity and guidance to members in assessing which arrangements may be permissible under the exceptions to the prohibition. PIABA specifically expressed support for applying Rule 3240 to arrangements that pre-exist the broker-customer relationship, extending the definition of customer to those who had accounts with a registered person in the previous six months, and making clear that the same or very similar conflicts of interest are present if a registered representative's close family member obtains a loan from a registered representative's customer. University of Pittsburgh expressed support for nearly every change proposed in *Notice* 21–43.[35] PIABA, SIFMA and University of Pittsburgh all supported the proposed modernization of the ''immediate family'' definition.[36]

General Opposition to the Proposal

NASAA and Malecki did not support the proposal in *Notice* 21–43 because they both would favor an outright prohibition on borrowing from or lending to customers.[37] NASAA stated that the proposed changes would continue to subject registered persons to disparate regulatory requirements. In particular, NASAA noted that its model rule concerning Dishonest or Unethical Business Practices of Broker-Dealers and Agents, which lists acts and practices that are considered contrary to high standards of commercial honor and just and equitable principles of trade, prohibits agents from ''[e]ngaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer.'' [38]

During the retrospective review of Rule 3240, while some stakeholders also suggested that all borrowing and lending arrangements should be prohibited, others commented that the rule has appropriate exceptions or that the rule should have stronger controls short of a complete prohibition.[39] In evaluating this wide range of views, FINRA considered, as stated in *Notice* 21–43, whether the rule should generally prohibit all borrowing and lending arrangements between registered persons and customers with no exceptions. FINRA decided against this approach, however, for several reasons.

First, Rule 3240 already contains a general prohibition that the proposed rule change would strengthen by extending the period over which the rule would apply, clarifying that the prohibition applies to pre-existing arrangements, and narrowing some of the exceptions. Second, FINRA believes

[31] *See* Letter from Michael Edmiston, President, Public Investors Advocate Bar Association, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated February 14, 2022 (''PIABA''); letter from Bernard V. Canepa, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated February 14, 2022 (''SIFMA''); letter from Alice L. Stewart et al., Esquire, Director, University of Pittsburgh Securities Arbitration Clinic and Professor of Law, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated February 14, 2022 (''University of Pittsburgh'').

[32] *See* Letter from Jenice L. Malecki, Malecki Law, to Marcia E. Asquith, Executive Vice President, Board and External Relations, FINRA, dated February 14, 2022 (''Malecki''); letter from Melanie Senter Lubin, President, North American Securities Administrators Association, Inc., to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, dated February 14, 2022 (''NASAA'').

[33] *See* Comment submission from Caleb Benore, dated December 29, 2021 (''Benore'').

[34] *See* PIABA, SIFMA and University of Pittsburgh.

[35] While generally supporting the proposal, University of Pittsburgh had comments regarding the business relationship exception, and PIABA had comments regarding the definition of ''customer.'' Those comments are discussed below.

[36] NASAA, which generally opposed the proposal, also expressed support for the modernization of the definition of ''immediate family.''

[37] In the alternative, NASAA and Malecki recommended various changes to Rule 3240, should it continue to permit any kinds of borrowing or lending arrangements. Those comments are discussed below.

[38] *See* Dishonest or Unethical Business Practices of Broker-Dealers and Agents (adopted May 23, 1983), *https://www.nasaa.org/wp-content/uploads/2011/07/29-Dishonest_Practices_of_BD_or_Agent.83.pdf.* NASAA also commented that its model rule concerning unethical business practices of investment advisers includes a similar prohibition. *See* NASAA Unethical Business Practices Of Investment Advisers, Investment Adviser Representatives, And Federal Covered Advisers Model Rule 102(a)(4)–1 (2019), available at *https://www.nasaa.org/wp-content/uploads/2019/05/NASAA-IA-Unethical-Business-Practices-Model-Rule.pdf* (providing that an investment adviser, an investment adviser representative or a federal covered adviser shall not engage in unethical business practices, including, among other things, ''[b]orrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds'' or ''[l]oaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser'').

[39] *See Notice* 21–43.

that all the exceptions are tailored to permit arrangements for which the potential benefits outweigh related potential risks. The exceptions allow for narrow situations where the likelihood that the registered person and customer entered into the borrowing or lending arrangement by virtue of the broker-customer relationship is reduced. Third, Rule 3240 also contains several protections that restrict a registered person's ability to enter into an arrangement within the five exceptions (*i.e.,* that no arrangements within the exceptions are permitted absent a member's procedures allowing the borrowing or lending of money between registered persons and customers and absent the registered person's compliance with applicable notice and approval requirements). These protections would be further strengthened through the proposed rule change to require members, when receiving written notice of a borrowing or lending arrangement, to make a reasonable assessment of the risks created by a borrowing or lending arrangement and a reasonable determination of whether to approve it.

FINRA does not believe that NASAA's model rule concerning the unethical business practices of broker-dealers and agents warrants changing the general approach of Rule 3240 as a general prohibition with narrow exceptions and associated protections. As explained above, one of the paragraphs in the NASAA model rule prohibits broker-dealer agents from engaging in the practice of borrowing or lending money or securities from a customer. Although some states have adopted that paragraph of the NASAA model rule verbatim,[40] some states have laws or regulations concerning borrowing or lending that are, in many respects, more similar to Rule 3240,[41] or even incorporate Rule 3240 by reference.[42] Moreover, FINRA has not identified any broker-dealer laws or regulations concerning borrowing or lending arrangements in several states that have high concentrations of FINRA-registered broker-dealer firms and branches.[43] Considering that Rule 3240 has a general prohibition on both borrowing arrangements and lending arrangements, limited tailored exceptions, and associated protections, including written-procedures requirements and notice-and-approval requirements, FINRA's rule—in its current form and as proposed—is as strong, if not stronger, than many states' laws.

In addition, NASAA commented that all borrowing and lending arrangements should be prohibited because the conflicts of interest that such arrangements create cannot be mitigated by member firm policies and procedures. NASAA contended that its position is consistent with the Commission's approach regarding certain other broker-dealer conflicts of interest. In this regard, NASAA wrote that the Commission recognized in the context of Regulation Best Interest (''Reg BI'') that some conflicts are so pervasive that they cannot reasonably be mitigated and must be eliminated in their entirety. NASAA contended that the direct personal incentives inherent in borrowing and lending arrangements, and the desire to collect or the duty to pay a customer, are of equal if not greater concern.

FINRA believes that the regulatory approach used in Rule 3240 is generally consistent with the approach the Commission took with Reg BI. Reg BI establishes a standard of conduct for broker-dealers and associated persons when they make a recommendation to a retail customer of any ''securities transaction or investment strategy involving securities.'' [44] FINRA notes that Reg BI requires broker-dealers to address conflicts of interest associated with recommendations, including through mitigation, and in certain circumstances where the Commission determined that such conflicts cannot be reasonably mitigated, through elimination. Rule 3240 is generally consistent with the spirit of this regulatory approach. In this regard, Rule 3240 generally prohibits most borrowing and lending arrangements and, thus, eliminates the potential conflicts these arrangements would present. Moreover, the proposed rule change would strengthen the general prohibition, by clarifying that it applies to arrangements that pre-exist a broker-customer relationship, extending it to arrangements that arise within six months after a broker-customer relationship ends, and adding supplementary material concerning conduct by registered persons regarding arrangements with persons related to the registered person or to the customer. Furthermore, as discussed, the rule's tailored exceptions, which would be narrowed under the proposed rule change, are for situations where the potential benefits of the borrowing or lending arrangement—including the benefits of being able to enter into some arrangements without a notice and approval process—outweigh related potential risks. In addition, the rule has additional protections (*i.e.,* the written-procedures requirement and the notice and approval requirements) that would be further enhanced by requiring firms to make a reasonable assessment of the risks and a reasonable determination of whether to approve the arrangement.[45]

In addition, NASAA suggested that FINRA should clarify that members may impose more stringent controls up to and including a total prohibition of borrowing and lending arrangements. When FINRA proposed to adopt Rule 3240 as part of the consolidated FINRA rulebook, it indicated that members can choose to permit registered persons to borrow money from or lend money to their customers consistent with the requirements of the rule or may be more restrictive, including prohibiting borrowing or lending arrangements in whole or in part.[46] In light of NASAA's suggestion, if the proposed rule change is approved, FINRA would reiterate this guidance in the Regulatory Notice announcing the approval of the proposed rule change.

The Immediate Family Exception

NASAA recommended eliminating the immediate family exception because elder financial exploitation is often perpetrated by family members. NASAA also contended that, if the current rule framework is maintained, notification and approval should be required for arrangements with immediate family members, particularly where the customer is a senior or may otherwise be a vulnerable adult under applicable

[40] *See, e.g.,* Georgia (Ga. Comp. R. & Regs. 590–4–5–.16(2)(b)(1) (2011)); Massachusetts (950 Mass. Code Regs. 12.204(1)(b)(1) (2020)); Pennsylvania (10 Pa. Code § 305.019(c)(2)(i) (2018)).

[41] *See, e.g.,* Connecticut (Conn. Agencies Regs. § 36b–31–15b(a)(1) (1995)); Michigan (Mich. Admin. Code r.451.4.27(3)(a) (2019)); New Jersey (N.J. Admin. Code § 13:47A–6.3(a)(43) and (44) (2017)); North Carolina (18 N.C. Admin. Code 6A.1414(c)(1) (1988)).

[42] *See, e.g.,* Colorado (Colo. Code Regs. 704–1 § 51–4.7(H)(2) (2019)); Florida (Fla. Admin. Code Ann. r.69W–600.013(2)(a) (2021)); Nevada (Nev. Admin. Code § 90.327(1)(d)(1) and Nev. Admin. Code § 90.321(1) (2008)).

[43] Specifically, FINRA has not identified state broker-dealer laws or regulations prohibiting borrowing or lending with customers in New York, California, Illinois or Texas. *See generally* 2023 FINRA Industry Snapshot at 22–23, available at *https://www.finra.org/sites/default/files/2023-04/2023-industry-snapshot.pdf.*

[44] *See* 17 CFR 240.15l–1(a)(1).

[45] Moreover, the member's reasonable assessment and determination would be informed by guidance in *Notice* 21–43 that the member's reasonable assessment of the risks may include consideration of, among other factors, ''any potential conflicts of interest in the registered person being in a borrowing or lending arrangement with a customer.''

[46] *See* Securities Exchange Act Release No. 61302 (January 6, 2010), 75 FR 1672, 1673 (January 12, 2010) (Notice of Filing of File No. SR–FINRA–2009–095).

state law. Malecki also raised concerns regarding elder financial exploitation and noted that debt situations can easily cause serious friction within family and friends. Malecki commented that the immediate family exception is too broad, and that only a narrow exception for educational debt for children should be permitted when brokers manage their own children's accounts.

Except for proposing to modify the definition of ''immediate family,'' FINRA does not propose to amend the existing immediate family exception or require notice and approval of arrangements with immediate family members. As explained above, the narrow exceptions to the rule—including for arrangements with immediate family members—are for situations where FINRA believes the likelihood that the registered person has borrowed from or lent money to a customer by virtue of the broker-customer relationship is reduced, and the rule contains additional protections that restrict a registered person's ability to enter into an arrangement within the exceptions.

FINRA believes that Malecki's suggestion to limit the immediate family exception to educational debt for children would narrow the exception too much. There are numerous other examples of beneficial borrowing or lending arrangements between immediate family members, including senior family members.[47] Such loans may cover, for example, medical expenses, child care or elder care expenses, emergency home repair costs, or expenses in the wake of a job loss, or they may support a family member's small business at an interest rate lower than commercially available. Furthermore, FINRA continues to believe, as it did when it previously eliminated from the predecessor to Rule 3240 notice and approval requirements for arrangements with immediate family members, that such requirements may invade the legitimate privacy interests of customers and registered persons.[48] Thus, FINRA believes the potential risks are outweighed by the potential benefits of permitting immediate family members to privately borrow from and lend to each other.

FINRA also reiterates that a registered person is prohibited from entering into a borrowing or lending arrangement with a customer who is an immediate family member, including one who is a senior investor, unless the member adopts written procedures permitting such arrangements. As explained above, members may choose to prohibit all borrowing and lending arrangements, allow only some of the exceptions enumerated in Rule 3240(a)(2), or impose limitations on the exceptions. FINRA believes that, by strengthening the general prohibition and narrowing its exceptions, the proposed rule change would further protect all investors, including senior investors.[49]

The Personal Relationship and Business Relationship Exceptions

Several commenters addressed the personal relationship and business relationship exceptions. Malecki commented that these two exceptions are too broad. Likewise, University of Pittsburgh requested that Rule 3240 limit the business relationship exception to the financial industry and noted that a registered person getting regular haircuts from a hairstylist should not fit within the business relationship exception. University of Pittsburgh also requested that FINRA provide examples of qualifying business relationships and more information about whether a business relationship qualifies for the exception. On this last point, University of Pittsburgh suggested that useful factors may include (1) the financial risks for the parties; (2) the industry involved; and (3) any other factor that may help determine the trust established between the parties and the comparative risks of their past business practices and their potential borrower-lender agreements.

FINRA shares some of these concerns and accordingly has proposed to narrow the personal relationship exception and to provide factors that are relevant to assessing whether a relationship falls within the scope of either exception. Beyond what FINRA proposed in *Notice* 21–43—and in response to the comments—FINRA proposes additional amendments to expressly provide that the personal and business relationships must be ''bona fide'' [50] and provide that an illustrative example of a ''business relationship'' is a loan from a registered person to a small outside business that the registered person co-owned for years for the sole purpose of providing the business with additional operating capital.[51]

FINRA does not believe, however, that additional changes to the personal and business relationship exceptions are warranted. The personal relationship exception, as proposed to be amended, would not permit ''virtually anyone'' to enter into a borrowing or lending arrangement.[52] Rather, the proposed rule change would narrow the personal relationship exception significantly, to apply only to personal relationships that are ''bona fide'' and ''close,'' and maintained outside of, and formed prior to, the broker-customer relationship. This narrower definition would reduce the risk that a registered person would concoct a personal relationship with a customer for the purpose of entering into a borrowing or lending arrangement with that customer, and it would address concerns expressed during the retrospective rule review that the exception can be exploited.

Likewise, FINRA believes that the business relationship exception, as proposed to be amended, is appropriately tailored. Rule 3240 currently requires that the qualifying business relationships be ''outside of the broker-customer relationship.'' This language serves to separate the business relationship from the broker-customer relationship, and thus mitigate the potential conflict of interest. The proposed rule change would further narrow this exception by requiring that the business relationship be ''bona fide.'' FINRA does not believe that the ''business relationship'' exception should be further limited to only the financial industry. There is no indication that the risks related to arrangements based on a bona fide business relationship turn on the industry or sector involved.

With respect to University of Pittsburgh's suggested factors, FINRA notes that the proposed rule change would require members, when receiving written notice under Rule 3240, to

[47] FINRA notes that the statements in this section that apply to senior family members also apply to other family members who may be vulnerable adults.

[48] *See* Securities Exchange Act Release No. 49081 (January 14, 2004), 69 FR 3410 (January 23, 2004) (Notice of Filing of File No. SR–NASD–2004–05) (explaining, among other things, that such requirements may invade the legitimate privacy interests of customers and registered persons).

[49] FINRA has maintained a longstanding commitment to protecting senior investors and continues to work to address risks facing this investor population as part of its regulatory mission, including by adopting rules that are intended to address risks related to possible financial exploitation of senior investors. *See, e.g.,* FINRA, *Protecting Senior Investors 2015–2020* (April 30, 2020); *Regulatory Notice* 20–34; Rule 2165 (Financial Exploitation of Specified Adults); Rule 4512.06 (Trusted Contact Person). FINRA further notes that Rule 2010 (Standards of Commercial Honor and Principles of Trade)—which provides that a member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade—protects investors from unethical behavior and is broad enough to cover a wide range of unethical conduct.

[50] *See* proposed Rule 3240(a)(2)(D) and (E).

[51] *See* proposed Rule 3240.04. FINRA agrees that a loan from a customer from whom the registered person purchases non-commercial consumer goods or services, such as hair styling services, would not fit within the business relationship exception.

[52] *See* Malecki.

perform a reasonable assessment of the risks created and make a reasonable determination of whether to approve the arrangement or broker-customer arrangement, as the case may be. As explained above, a member's reasonable assessment and determination would be informed by the guidance already provided in *Notice* 21–43, which includes a non-exhaustive list of factors to consider when evaluating whether to approve a borrowing or lending arrangement. For example, these factors include, among others, any potential conflicts of interest, the length and type of relationship, the material terms of the arrangement, and the customer's or registered person's ability to repay the loan. These factors are broad enough to cover many of the kinds of specific considerations suggested by University of Pittsburgh, including its suggestion that members consider the industry that the loan involves.

Definition of ''Customer''

Under the proposed rule change, the rule's prohibition would extend to arrangements with any customer who, within the previous six months, had a securities account assigned to the registered person at any member firm.[53] NASAA suggests that the period of time used in proposed Rule 3240.02 should be one year, instead of six months, because Rule 4111 (Restricted Firm Obligations) uses a one-year lookback period.[54]

The Rule 4111 lookback periods (including, among others, the one-year lookback period that pertains to ''Registered Persons In-Scope'' [55]) impact how Rule 4111 identifies firms with a significant history of misconduct. FINRA, however, has proposed a six-month period of time to align proposed Rule 3240.02 with the six-month period in the definition of ''customer'' in Rule 3241, because Rule 3241 addresses similar potential conflicts of interest as Rule 3240.[56] Moreover, FINRA believes the six-month lookback period in proposed Rule 3240.02 strikes an appropriate balance between achieving the regulatory objective of addressing circumvention of the proposed rule change and imposing requirements that are reasonable and appropriate, including reasonable requirements on members in tracking transfers of customers' accounts.[57]

Supervision and Customer-Disclosure Requirements

NASAA suggested that members should be required to incorporate specific supervisory procedures for assessing, and after approving, a borrowing or lending arrangement. Specifically, NASAA commented that the member should be required to document (1) the steps it undertook to assess the risk prior to approving the arrangement; (2) the steps it will take to minimize the conflict of interest; (3) how it communicated to the customer the risk created by the lending arrangement or repayment terms so that the customer appreciates the risk; and (4) an outline of the supervisory measures that it will take. Regarding the member's assessment of a borrowing or lending arrangement, NASAA contended that the rule should require members to evaluate borrowing and lending arrangements, and that the member's assessment should include an interview (preferably by a compliance officer) with the customer outside of the presence of the registered person or, where that is not possible, other verification that the customer benefits from and entered into the arrangement on his or her own volition and without pressure. Regarding supervision after approving an arrangement, NASAA commented that members should closely monitor the account of a customer who is a party to a borrowing or lending arrangement and impose formal conditions, apply heightened scrutiny to these accounts on an ongoing, annual review basis, place the registered person on heightened supervision, and conduct additional reviews on trades and transactions to ensure that recommendations are suitable. Similarly, Malecki commented that all loans except for educational debt for children should be supervised, and that ''supervision of loans'' should be aligned with FINRA rules regarding outside business activities and private securities transactions.[58]

The fundamental approach of FINRA's supervision rule is to require members to establish and maintain a system to supervise the activities of each associated person that is ''reasonably designed'' to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.[59] Likewise, the written supervisory procedures required by FINRA's supervision rule must be ''reasonably designed'' to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.[60] In guidance, FINRA has previously explained that written supervisory procedures should include a description of the controls and procedures used by members to deter and detect misconduct and improper activity.[61] Additionally, at a minimum, written supervisory procedures should include and describe (1) the specific identification of the individual(s) responsible for supervision; (2) the supervisory steps and reviews to be taken by the appropriate supervisor; (3) the frequency of such reviews; and (4) how such reviews shall be documented.[62] FINRA does not believe

[53] *See* proposed Rule 3240.02.

[54] PIABA also suggests that the period of time used in proposed Rule 3240.02 should be one year or more, instead of six months, and cites the time it could take to ''unwind some position a registered representative might recommend.'' It is unclear, however, what kinds of positions this comment pertains to or what would need to be unwound.

[55] *See* Rule 4111(i)(13).

[56] Like Rule 3240, Rule 3241 addresses situations that may create potential conflicts of interest between registered persons and their customers. Specifically, Rule 3241 addresses the potential conflicts that registered persons may face when they are named a customer's beneficiary, executor or trustee, or hold a power of attorney or similar position for or on behalf of a customer. It limits any registered person from being named a beneficiary, executor or trustee, or to have a power of attorney or similar position of trust for or on behalf of a customer, and protects investors by requiring members to affirmatively address registered persons being named beneficiaries or holding positions of trusts for customers. *See Regulatory Notice* 20–38 (Oct. 29, 2020).

[57] Prior to the adoption of Rule 3241, many members ''prohibit[ed] or impos[ed] limitations on being named as a beneficiary or to a position of trust when there is not a familial relationship,'' but FINRA ''observed situations where registered representatives tried to circumvent firm policies, such as resigning as a customer's registered representative [and] transferring the customer to another registered representative.'' *See Regulatory Notice* 20–38. ''To address attempted circumvention of the restrictions (*e.g.,* by closing or transferring a customer's account),'' FINRA defined ''customer'' in Rule 3241 to include ''any customer that has, or in the previous six months had, a securities account assigned to the registered person at any member firm.'' *Id.;* Rule 3241.01. When proposing Rule 3241, FINRA explained that the inclusion of the six-month look-back period ''is important in addressing potential conflicts of interest and circumvention of the proposed rule change.'' *See* Securities Exchange Act Release No. 89218 (July 2, 2020), 85 FR 41249, 41256 (July 9, 2020) (Notice of Filing of File No. SR–FINRA–2020–20). FINRA further explained, in response to a comment suggesting that the proposed definition of ''customer'' include a 12-month lookback provision, that it ''believes the six-month period strikes an appropriate balance between achieving the regulatory objective of addressing circumvention of the proposed rule change by transferring the customer account to another representative and imposing reasonable requirements on member firms in tracking account transfers.'' *Id.*

[58] *See* Rules 3270 (Outside Business Activities of Registered Persons) and 3280 (Private Securities Transactions of an Associated Person).

[59] *See* Rule 3110(a); *see also NASD Notice to Members* 99–45 (June 1999).

[60] *See* Rule 3110(a)(1) and (b)(1).

[61] *See NASD Notice to Members* 98–96 (December 1998); *see also NASD Notice to Members* 99–45, *supra* note 59.

[62] *See NASD Notice to Members* 98–96, *supra* note 61; *see also NASD Notice to Members* 99–45, *supra* note 59.

it is necessary or appropriate to further prescribe specific supervisory procedures that members should use when supervising for compliance with Rule 3240.

In response to the comments, however, FINRA is proposing stronger controls for when a member considers whether to approve a borrowing or lending arrangement or, where there is a pre-existing borrowing or lending arrangement, a new broker-customer relationship—specifically, the proposed requirement that a member, upon receiving written notice under Rule 3240, perform a ''reasonable assessment'' of the risks and a ''reasonable determination'' of whether to approve the arrangement or new broker-customer relationship, as the case may be.[63] As explained above, FINRA intends that a member's reasonable assessment and reasonable determination would be informed by the guidance that FINRA provided in *Notice* 21–43 concerning the factors members may consider when assessing whether to approve a borrowing or lending arrangement. FINRA believes this guidance would help members, when performing the reasonable assessments and determinations required under the proposed rule change, evaluate the key risks and conflicts and afford appropriate flexibility in evaluating which factors may apply to a particular situation.[64]

In a related comment, NASAA suggested that FINRA should require registered persons, at a minimum, to disclose to customers the factors listed in the guidance provided in *Notice* 21–43. Although NASAA refers to those factors as ''the Proposal's recommended disclosures,'' the factors in *Notice* 21–43 are intended to help guide a member's assessment of whether to approve a loan; they were not designed or intended to be the basis of customer disclosures about a loan. Nevertheless, FINRA notes that that guidance states that FINRA expects a member, if possible and as part of the member's evaluation of whether to approve a borrowing or lending arrangement, to try to discuss the arrangement with the customer.

Retroactivity

NASAA commented that applying the proposed rule change retroactively could provide benefits to investors and recommended retroactive disclosure of pre-existing borrowing and lending arrangements.[65] FINRA seeks, however, to avoid creating situations that would require registered persons and customers to terminate borrowing or lending arrangements or broker-customer relationships that, when entered into, were permissible under the current version of Rule 3240. In general, the proposed rule change would not apply retroactively to borrowing or lending arrangements that were entered into prior to the effective date of the proposed rule change and were permissible under the current version of Rule 3240.[66] Rather, the proposed rule change would apply only to (1) new arrangements and new broker-customer relationships that occur after the effective date of the proposed rule change; and (2) modifications that occur after the effective date of the proposed rule change of borrowing or lending arrangements that were entered into before the effective date.[67] Although FINRA is not proposing to require members to re-evaluate previously approved arrangements, members would have the discretion to do so.[68]

Harmonization of Regulatory Approaches to Financial Professionals' Borrowing and Lending Arrangements

In *Notice* 21–43, FINRA described some similarities and differences between Rule 3240 and the federal and state regulatory approaches for investment advisers and their supervised persons. FINRA sought to encourage and inform a broader dialogue about whether the similar risks presented when any financial professional borrows from or lends money to customers warrants a more uniform approach to regulating this activity. SIFMA commented that it welcomes a discussion on harmonizing the regulatory approaches, where appropriate.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–FINRA–2024–001 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–FINRA–2024–001. 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

[63] *See* proposed Rule 3240.06.

[64] With respect to Malecki's comment that ''supervision of loans'' should be aligned with FINRA rules regarding outside business activities and private securities transactions, FINRA notes that Rule 3270 does not require members to ''supervise'' outside business activities. However, if a loan constitutes a private securities transaction, then Rule 3280—and any applicable supervisory obligations—would apply. *See* Rule 3280(c)(2) (discussing supervisory requirements involving private securities transactions for compensation); 3280(d) (discussing private securities transactions not for compensation, where a member may ''at its discretion'' require the person to adhere to specified conditions); 3280(e)(1) (defining ''private securities transaction'' and several exclusions to that definition).

[65] FINRA assumes that NASAA's comment about ''pre-existing'' arrangements concerns arrangements that were entered into before the effective date of the proposed rule change.

[66] For example, the proposed rule change to narrow the personal relationship exception would not apply retroactively to a borrowing or lending arrangement that was entered into prior to the effective date of the proposed rule change and that was permissible under the current personal relationship exception.

[67] FINRA reiterates, however, that the current rule's general prohibition against borrowing and lending arrangements between registered persons and customers already applies to arrangements that pre-existed the formation of the broker-customer relationship, and that the proposed rule change would clarify that scope.

[68] FINRA also notes that FINRA's supervision rule would require a member to follow-up on ''red flags'' indicating problematic activity related to borrowing or lending arrangements between registered persons and their customers, including arrangements that were entered into prior to the effective date of the proposed amendments. *See* Securities Exchange Act Release No. 89218 (July 2, 2020), 85 FR 41249, 41251 (July 9, 2020) (Notice of Filing of File No. SR–FINRA–2020–20) (explaining that Rule 3110 (Supervision) includes the ''longstanding obligation to follow-up on 'red flags' indicating problematic activity'').

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 such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2024–001 and should be submitted on or before February 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[69]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–01068 Filed 1–19–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–182, OMB Control No. 3235–0237]

Submission for OMB Review; Comment Request; Extension: Form N–54A

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (the ''Investment Company Act''), certain investment companies can elect to be regulated as business development companies, as defined in Section 2(a)(48) of the Investment Company Act (15 U.S.C. 80a–2(a)(48)). Under Section 54(a) of the Investment Company Act (15 U.S.C. 80a–53(a)), any company defined in Section 2(a)(48)(A) and (B) may elect to be subject to the provisions of Sections 55 through 65 of the Investment Company Act (15 U.S.C. 80a–54 to 80a–64) by filing with the Commission a notification of election, if such company has: (1) a class of equity securities registered under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''); or (2) filed a registration statement pursuant to Section 12 of the Exchange Act for a class of its equity securities. The Commission adopted Form N–54A (17 CFR 274.53) as the form for notification of election to be regulated as a business development company.

The purpose of Form N–54A is to notify the Commission that the investment company making the notification elects to be subject to Sections 55 through 65 of the Investment Company Act, enabling the Commission to administer those provisions of the Investment Company Act to such companies.

The Commission estimates that on average approximately 21 business development companies file these notifications each year. Each of those business development companies need only make a single filing of Form N–54A. The Commission further estimates that this information collection imposes a burden of 0.5 hours, resulting in a total annual PRA burden of 10.5 hours. Based on the estimated wage rate, the total cost to the business development company industry of the hour burden for complying with Form N–54A would be approximately $4,462.50.

The collection of information under Form N–54A is mandatory. The information provided by the form is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by February 21, 2024 to (i) *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: January 17, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–01099 Filed 1–19–24; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) requires Federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before March 22, 2024.

ADDRESSES: Send all comments by email to Tamara Jennings, Sr. Loan Specialist, Office of Financial Assistance, Small Business Administration at *tamara.jennings@sba.gov.*

FOR FURTHER INFORMATION CONTACT: Tamara Jennings, Sr. Loan Specialist, (202) 205–6674, *tamara.jennings@sba.gov* or Curtis B. Rich, Agency Clearance Officer, (202) 205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: For SBA financial assistance programs, SBA Form 413 Personal Financial Statement (PFS) collects information regarding the assets and liabilities of certain owners, officers and guarantors of the small business applicant benefiting from such assistance and is used when analyzing the applicant's repayment abilities or creditworthiness. SBA's Surety Bond Guaranty Program uses the Form 413 PFS information during the claim recovery process. The information is also collected from applicants and participants in SBA's 8(a) Business Development (BD) and Women-Owned Small Business (WOSB) Program certification process to determine

[69] 17 CFR 200.30–3(a)(12).

whether they meet the economic disadvantage requirements of the program.

All program offices use the same Form 413. SBA plans to revise and clarify the instructions for the Form 413 to ensure the public will be aware of the specific submission process for each program office. SBA will update the Form 413 to include recent rule and policy updates related to its thresholds for inflation. Lastly, the Form 413 may undergo additional formatting changes to make it easier to address mandatory Federal government 508 accessibility compliance.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the Agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

OMB Control Number: 3245–0188.

(1) Title: Personal Financial Statement.

Description of Respondents: 7(a) and 504 loan Program applicants, Surety Bond Program recovery claimants, Disaster Loan Program business applicants 8(a)/BD and WOSB Program applicants.

Form Number: SBA Form 413.

Total Estimated Annual Responses: 251,934.

Total Estimated Annual Hour Burden: 344,174.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2024–01096 Filed 1–19–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20010 and #20011; ILLINOIS Disaster Number IL–20000]

Presidential Declaration Amendment of a Major Disaster for the State of Illinois

AGENCY: 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–4749–DR), dated 11/20/2023.

Incident: Severe Storms and Flooding.

Incident Period: 09/17/2023 through 09/18/2023.

DATES: Issued on 01/16/2024.

Physical Loan Application Deadline Date: 02/09/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 08/20/2024.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

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 11/20/2023, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 02/09/2024.

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. 2024–01060 Filed 1–19–24; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12310]

Secretary of State's Determinations Under the International Religious Freedom Act of 1998 and Frank R. Wolf International Religious Freedom Act of 2016

Pursuant to section 408(a) of the International Religious Freedom Act of 1998 (Pub. L. 105–292), as amended (the Act), notice is hereby given that, on December 29, 2023, the Secretary of State, under authority delegated by the President, has designated each of the following as a ''country of particular concern'' (CPC) under section 402(b) of the Act, for having engaged in or tolerated particularly severe violations of religious freedom: Burma, China, Cuba, Eritrea, Iran, the Democratic People's Republic of Korea, Nicaragua, Pakistan, Russia, Saudi Arabia, Tajikistan, and Turkmenistan. The Secretary simultaneously designated the following as satisfying the requirement to take Presidential Action for these CPCs:

For Burma, the existing ongoing restrictions referenced in 22 CFR 126.1, pursuant to section 402(c)(5) of the Act;

For the People's Republic of China, the existing ongoing restriction on exports to China of crime control or detection instruments or equipment, under the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (Pub. L. 101–246), pursuant to section 402(c)(5) of the Act;

For Cuba, the existing ongoing restrictions referenced in 31 CFR 515.201 and the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (Helms-Burton Act), pursuant to section 402(c)(5) of the Act;

For the Democratic People's Republic of Korea, the existing ongoing restrictions to which the Democratic People's Republic of Korea is subject, pursuant to sections 402 and 409 of the Trade Act of 1974 (the Jackson-Vanik Amendment), and pursuant to section 402(c)(5) of the Act;

For Eritrea, the existing ongoing restrictions referenced in 22 CFR 126.1, pursuant to section 402(c)(5) of the Act;

For Iran, the existing ongoing travel restrictions in section 221(c) of the Iran Threat Reduction and Syria Human Rights Act of 2012 (TRA) for individuals identified under section 221(a)(1)(C) of the TRA in connection with the commission of serious human rights abuses, pursuant to section 402(c)(5) of the Act;

For Nicaragua, the existing ongoing restrictions referenced in section 5 of the Nicaragua Investment Conditionality Act of 2018; (the NICA Act)

For Pakistan, a waiver as required in the ''important national interest of the United States,'' pursuant to section 407 of the Act;

For Russia, the existing ongoing sanctions issued for individuals identified pursuant to section 404(a)(2) of the Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012 and section 11 of the Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014, as amended by Section 228 of the Countering America's Adversaries Through Sanctions Act, pursuant to section 402(c)(5) of the Act;

For Saudi Arabia, a waiver as required in the ''important national interest of the United States,'' pursuant to section 407 of the Act;

For Tajikistan, a waiver as required in the ''important national interest of the United States,'' pursuant to section 407 of the Act; and

For Turkmenistan, a waiver as required in the ''important national interest of the United States,'' pursuant to section 407 of the Act.

In addition, the Secretary of State has designated the following countries as ''special watch list'' countries for engaging in or tolerating severe violations of religious freedom: Algeria, Azerbaijan, the Central African Republic, Comoros, and Vietnam.

Pursuant to section 408(a) of the International Religious Freedom Act of 1998 (Pub. L. 105–292), notice is hereby given that, on December 29, 2023, the Secretary of State, under authority delegated by the President, has designated each of the following as an ''entity of particular concern'' under section 301 of the Frank R. Wolf International Religious Freedom Act of 2016 (Pub. L. 114–281), for having engaged in particularly severe violations

of religious freedom: Al-Shabaab, Boko Haram, Hayat Tahrir al-Sham, the Houthis, ISIS, ISIS-Sahel (formerly known as ISIS in the Greater Sahara), ISIS-West Africa, Jamaat Nasr al-Islam wal Muslimin, and the Taliban.

FOR FURTHER INFORMATION CONTACT: Carter Allen, Office of International Religious Freedom, U.S. Department of State, (Phone: (202) 718–1792 or Email: *AllenCG@state.gov*).

Daniel L. Nadel,

Director, Office of International Religious Freedom, Department of State.

[FR Doc. 2024–01084 Filed 1–19–24; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2024–0003]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for extension of currently approved information collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for renewal of an existing information collection that 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 March 22, 2024.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 0003 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 *https://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: Scott Gable, 202–366–2176, Office of Safety, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, between 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Highway Safety Improvement Program.

OMB Control #: 2125–0025.

Background: The Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58, also known as the ''Bipartisan Infrastructure Law'' (BIL)) continues the Highway Safety Improvement Program (HSIP) as a core federal-aid program with the purpose to achieve a significant reduction in traffic fatalities and serious injuries on all public roads, including non-State-owned public roads and roads on tribal lands. The HSIP requires a data-driven, strategic approach to improving highway safety on all public roads that focuses on performance.

The existing provisions of Title 23 U.S.C. 130, Railway-Highway Crossings Program, as well as implementing regulations in 23 CFR part 924, remain in effect. Included in these combined provisions are requirements for State DOTs to annually produce and submit to FHWA by August 31 reports related to the implementation and effectiveness of their HSIPs, that are to include information on: (a) progress being made to implement HSIP projects and the effectiveness of these projects in reducing traffic fatalities and serious injuries [Sections 148(h)]; and (b) progress being made to implement the Railway-Highway Crossings Program and the effectiveness of the projects in that program [Sections 130(g) and 148(h)], which will be used by FHWA to produce and submit biennial reports to Congress. To be able to produce these reports, State DOTs must have safety data and analysis systems capable of identifying and determining the relative severity of hazardous highway locations on all public roads, based on both crash experience and crash potential, as well as determining the effectiveness of highway safety improvement projects. FHWA provides an online reporting tool to support the annual HSIP reporting process. Additional information is available on the Office of Safety website at *https://safety.fhwa.dot.gov/hsip/resources/onrpttool/.* Reporting into the online reporting tool meets all report requirements and USDOT website compatibility requirements. The information contained in the annual HSIP reports provides FHWA with a means for monitoring the effectiveness of these programs and may be used by Congress for determining the future HSIP program structure and funding levels.

Respondents: 50 State Transportation Departments, the District of Columbia, and Puerto Rico.

Frequency: Annually.

Estimated Average Burden per Response: 250 hours.

Estimated Total Annual Burden Hours: 13,000 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; and 49 CFR 1.48.

Issued on: January 17, 2024.

Jazmyne Lewis,

Information Collection Officer.

[FR Doc. 2024–01126 Filed 1–19–24; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of limitation on claims for judicial review of actions by the California Department of Transportation (Caltrans).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final. The actions relate to a proposed highway project, on State Route 99 from post miles 56.4–57.6 in Kern County and post miles 0.0–13.5 in Tulare County, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency

actions on the highway project will be barred unless the claim is filed on or before [Insert date 150 days after publication in the **Federal Register**]. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Javier Almaguer, Senior Environmental Scientist, 2015 East Shields Avenue, Suite 100, Fresno, California 93726, (559) 287–9320, *javier.almaguer@dot.ca.gov,* Mon.–Fri. 9:00 a.m.–5:00 p.m.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to *23 U.S.C. 327.* Notice is hereby given that the Caltrans, has taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: Caltrans proposes to rehabilitate the pavement and construct an additional northbound and southbound lane on State Route 99 from Delano to Pixley in Kern and Tulare counties.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment/Finding of No Significant Impact (FONSI) for the project, approved on September 11, 2023, and in other documents in the project records. The FEA, FONSI, and other project records are available by contacting Caltrans at the address provided above. The Caltrans FEA and FONSI can be viewed and downloaded from the project website at *https://dot.ca.gov/caltrans-near-me/district-6/district-6-projects/06-0w790.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act of 1969 (NEPA) [42 U.S.C. 4321–4335].

2. *Air:* Clean Air Act [23 U.S.C. 109(j) and 42 U.S.C. 7521(a)].

3. *Wildlife:* Federal Endangered Species Act [16 U.S.C. 1531–1543]; Fish and Wildlife Coordination Act [16 U.S.C. 661–666(C); Migratory Bird Treaty Act [16 U.S.C. 760c–760g].

4. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*].

5. *Wetlands and Water Resources:* Clean Water Act [33 U.S.C. 1344].

6. *Hazardous Waste:* Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. 103]; Resource Conservation and Recovery Act of 1976 [42 U.S.C. 6901 *et seq.*].

7. *Social and Economic:* NEPA implementation [23 U.S.C. 109(h)]; Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)].

8. *Executive Orders:* E.O. 12898 Federal Actions to Address Environmental Justice and Low-Income Populations; E.O. 11988 Floodplain Management.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Antonio Johnson,

Director of Planning, Environmental and Right of Way, Federal Highway Administration, California Division.

[FR Doc. 2024–01052 Filed 1–19–24; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of limitation on claims for judicial review of actions by the California Department of Transportation (Caltrans).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans, that are final. The actions relate to a proposed highway project, on State Route 99 from post miles 25.2 to post mile 30.6 in Tulare County, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before June 20, 2024. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Javier Almaguer, Senior Environmental Scientist, 2015 East Shields Avenue, Suite 100, Fresno, California 93726, (559) 287–9320, *javier.almaguer@dot.ca.gov,* Mon.–Fri. 9:00 a.m.–5:00 p.m.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans, have taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: Caltrans proposes to widen State Route 99 in the City of Tulare from just south of the Avenue 200 Overcrossing to the Prosperity Avenue Overcrossing (post miles 25.2 to 30.6). One lane would be built in each direction in the freeway median to create a six-lane freeway. The existing interchange at Paige Avenue would be reconstructed to a tight diamond layout and two roundabouts would be constructed on Paige Avenue at Blackstone Street and Laspina Street. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment/Finding of No Significant Impact (FONSI) for the project, approved on December 29, 2023, and in other documents in the project records. The FEA, FONSI, and other project records are available by contacting Caltrans at the address provided above. The Caltrans FEA and FONSI can be viewed and downloaded from the project website at *https://dot.ca.gov/caltrans-near-me/district-6/district-6-projects/06-48950,* or viewed at the Tulare Public Library.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act of 1969.

2. *Air:* Clean Air Act, 42 U.S.C. 7401–7671.

3. *Wildlife:* Federal Endangered Species Act of 1973 (ESA), 16 U.S.C. 1531–1543]; Fish and Wildlife Coordination Act [16 U.S.C. 661–666(C); Migratory Bird Treaty Act [16 U.S.C. 760c–760g].

4. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*].

5. *Wetlands and Water Resources:* Clean Water Act [33 U.S.C. 1344].

6. *Hazardous Waste:* Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. 103]; Resource Conservation and Recovery Act of 1976 [42 U.S.C. 6901 *et seq.*].

7. *Social and Economic:* NEPA implementation [23 U.S.C. 109(h)]; Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)].

8. *Executive Orders:* E.O. 12898 Federal Actions to Address Environmental Justice and Low-Income Populations; E.O. 11988 Floodplain Management.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Antonio Johnson,

Director of Planning, Environmental and Right of Way, Federal Highway Administration, California Division.

[FR Doc. 2024–01053 Filed 1–19–24; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0180]

Agency Information Collection Activities; Renewal of an Approved Information Collection: Practices of Household Goods Brokers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. FMCSA requests OMB's renewed approval to the ICR titled ''Practices of Household Brokers,'' which applies to household goods (HHG) brokers who are procured by the public (HHG shippers) to arrange the transportation of the shipper's household goods by HHG motor carriers. This renewal updates wage related costs that have changed since the last approval and revises the previous information collection total respondent hourly and cost burden.

DATES: Comments on this notice must be received on or before March 22, 2024.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2023–0180 using any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001 between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.
- *Fax:* 1–202–493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Donnice Wagoner, Commercial Enforcement and Investigations Division, DOT, FMCSA, West Building 6th Floor MC–SEI, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (202) 366–8045; *donnice.wagoner@dot.gov.*

SUPPLEMENTARY INFORMATION:

Instructions

All submissions must include the Agency name and docket number. For detailed instructions on submitting comments, see the Public Participation heading below. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Public Participation and Request for Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2023–0180), indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online.

To submit your comment online, go to *https://www.regulations.gov/docket/FMCSA-2023-0180/document,* click on this notice, click ''Comment,'' and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

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 *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Background

As a result of Title IV, Subtitle B of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59) and a petition for rulemaking from the American Moving and Storage Association (AMSA), FMCSA amended then-existing regulations for brokers in a final rule titled, ''Brokers of Household Goods Transportation by Motor Vehicles,'' (75 FR 72987, Nov. 29, 2010), amending 49 CFR part 371 by providing additional consumer protection responsibilities for brokers of HHG.

Section 4212 of SAFETEA–LU directs the Secretary of Transportation to require HHG brokers to provide shippers with information throughout the various stages of their interactions with shippers. The following phases summarize the information collection required by the HHG broker at the various contractual stages by 49 CFR 371.

I. First Phase: ''Prospecting''

When a HHG shipper is looking to procure a HHG broker's services, the broker must collect the following information and display it on its websites and solicitation materials:

- Its physical address (§ 371.107a);
- Its U.S. DOT license numbers (§ 371.107b);
- A statement indicating it will not transport the shipper's goods but will only arrange for goods to be transported by a registered motor carrier (§ 371.107c);
- If the broker chooses to publish rates on its website or solicitation materials, the broker must also publish a statement that the rates are based on a motor carrier's publicly available rates (§ 371.107d);
- If broker chooses to publish a list of motor carriers it works with, the list must be a list only of carriers with which brokers have agreements (§ 371.107e); and
- Brokers must publish information regarding their cancellation policies, including information on deposits and refunds (§ 371.117a).

For the exact text of regulations see section 12 part I of this document.

II. Second Phase: ''**Contact**''

When an HHG shipper makes a reasonable request seeking additional information about broker services, the HHG broker must collect the following information and distribute it to the HHG shipper:

- A list of carriers it has agreements with (§ 371.109a); and
- A statement indicating the broker is not a carrier and that the broker is only arranging transportation of shipper's goods (§ 371.109b).

For the exact text of regulations see Section 12 Part II.

III. Third Phase: ''**Estimate**''

When an HHG shipper requests an estimate, the broker must collect the following information and provide it to the shipper:

- FMCSA's published information material: (1) ''Ready to Move? Tips for a Successful Interstate Move'' and (2) ''Your Rights and Responsibilities When You Move (2022 Update)'' (§ 371.111a1, 2, and 3);
- A written estimate based on a physical survey of household items (§ 371.113a) and published carrier rates (§ 371.113b); and
- If applicable, a ''Waiver'' receipt showing shipper waived their right to a physical survey of their household items (§ 371.113b).

The broker must obtain a signed document showing that FMCSA's published information material was received by the shipper (§ 371.111c). For the exact text of regulations see section 12 part III.

IV. Fourth Phase: ''**Agreement**''

Should the shipper find the estimate(s) and broker services reasonable and wish to book the broker's services, the two parties must enter into an agreement. At this point it is standard practice for shippers to pay a deposit or full payment. Before a deposit is collected, the broker must collect the following information and distribute it to the HHG shipper:

- An agreement document with required specifications as laid out by regulation § 371.115; and
- An agreement document which highlights the broker's and/or motor carrier's refund policy for cancelation of agreements (§ 371.117a).

For the exact text of regulations see section 12 part IV.

V. Fifth Phase: ''**Delivery**''

After the broker confirms delivery of the household goods by the carrier, the broker must collect the following information and distribute it to the HHG shipper:

- A receipt with transaction data, including cancelation details if the agreement was canceled as laid out by 49 CFR 371.3.

The complete collection of information, required by the referenced regulations, assists shippers in their business dealings with interstate HHG brokers. The information collected is used by prospective shippers to make informed decisions about contracts, services ordered, executed, and settled. The HHG broker is often the primary contact for individual shippers and in the best position to educate shippers and prepare them for a successful move. The information collection is intended to combat deceptive business practices; the information helps enforcement personnel better protect consumers by verifying that shippers are receiving information as required by regulations.

FMCSA revises the total annual burden to 86,488 hours. This is an increase of 13,680 annual burden hours from the currently approved 72,808 burden estimate. The increase is due to the following:

(1) FMCSA's records for household goods brokers increased from 652 brokers to 1,256 brokers.

Title: Practices of Household Goods Brokers.

OMB Control Number: 2126–0048.

Type of Request: Renewal of currently approved collection.

Respondents: Brokers of Household Goods.

Estimated Number of Respondents: 1,256.

Estimated Time per Response: Varies.

Expiration Date: May 31, 2024.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 86,488.

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 performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this ICR.

Issued under the authority of 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2024–01080 Filed 1–19–24; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2023–0002–N–24]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, this notice announces that FRA is forwarding the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and comment. The ICR describes the information collection and its expected burden. On July 21, 2023, FRA published a notice providing a 60-day period for public comment on the ICR.

DATES: Interested persons are invited to submit comments on or before February 21, 2024.

ADDRESSES: Written comments and recommendations for the proposed ICR should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find the particular ICR by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Arlette Mussington, Information Collection Clearance Officer, at email: *arlette.mussington@dot.gov* or telephone: (571) 609–1285, or Ms. Joanne Swafford, Information Collection Clearance Officer, at email: *joanne.swafford@dot.gov* or telephone: (757) 897–9908.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On July 21, 2023, FRA published a 60-day notice in the **Federal Register** soliciting public comment on the ICR for which it is now seeking OMB approval. *See* 88 FR 47233. FRA received 11 comments, summarized below, related to the proposed collection of information.

FRA received several comments from labor organizations, individuals (including a railroad employee), the National Railroad Passenger Corporation (Amtrak), and interested coalitions that strongly support this proposed ICR. Noting their safety concerns with long trains, the Transportation Division of the International Association of Sheet Metal, Air, Rail and Transportation workers (SMART–TD), the Transportation Trades Department of the AFL–CIO (TTD), an individual railroad employee, and the Illinois Commerce Commission (ICC) provided feedback regarding the steady and significant increase of long train lengths and noted that railroads already retain some of the data FRA is proposing to collect. SMART–TD commented that ''tracking the lengths and tonnage of all freight trains will take this information from the realm of anecdotal to actionable.'' Further, TTD commented that, ''This information collection request comes at a time of widespread safety issues in the freight rail industry'' and ''We commend FRA for moving forward with this ICR and request that the agency consider our recommended additions to the proposed reporting requirements.'' Amtrak noted that freight traffic has a major impact on the performance of Amtrak's trains and that increasingly long freight trains have exacerbated these problems. The prevailing opinion of these supportive commenters is that this proposed collection of information on train length is essential to understanding how to improve the safe and efficient operation of long trains.

In expressing support for this ICR, various commenters encouraged FRA to collect additional categories of information. For example, a group of nine urban Chicago communities, identified as the Coalition to Stop CPKC, recommended that the monthly data be presented in a format that allows interested parties to determine increasing train lengths in key regional areas. TTD encouraged FRA to consider collecting data related to train weight distribution, the number of buffer cars between hazardous materials shipments and crew member locations, and the presence of distributed power units (DPUs).

FRA did not add these categories because requiring respondents to provide this additional information without further FRA review, could create additional requirements that are beyond the initial purpose of this information collection. Similarly, commenter recommendations to include variables, such as delays to emergency responders due to blocked crossings and establishing a retroactive baseline year, are not being considered at this time. FRA directs commenters to field IDs F22 through F24.C of Form FRA F 6180.277, which request blocked crossing information. Once the ICR has been approved, FRA will review the data collected and consider adding additional data categories in the future.

Two individuals commented that the proposed ICR creates an excessive paperwork burden on respondents and that they do not believe FRA will be able to process and analyze the collected data in a timely manner. These commenters also asserted they do not believe FRA is avoiding duplicative collections by reviewing train length data collected on Form FRA F 6180.54. FRA is cognizant of the increased paperwork burdens that collecting this type of data create and has incorporated several measures to minimize them. As an example, FRA notes that reviewing train length information from existing Form FRA F 6180.54 under the Special Study Block 49a data field, rather than collecting the data on Form FRA F 6180.277, will avoid duplicative collections. When developing this proposed ICR, FRA considered the volume of data to be collected and the agency's capability to collect, analyze, and review it. Additionally, FRA's estimate of 40 minutes per month for the average time per response, or 8 hours annually, is based on data-compiling methods already in use by Class I railroads for other FRA reporting requirements. Furthermore, FRA agrees with the ICC's comment that the burden will be manageable and will decrease over time once a railroad has established the protocol to collect, if the railroad does not already do so, and present this data.

FRA received comments that the ICR does not define what constitutes ''emergency'', and ''communication event losses''. FRA addressed this comment by revising field ID F12, to include reference to 49 CFR 220.13 to define ''emergency events''. ''Communication loss events'' are described in field IDs F13 through F15.C of Form FRA F 6180.277. Commenters also asserted that FRA should collect data on broken drawbars and that FRA omitted the word ''certification'' with respect to engineer certification revocations.

In response to this feedback, and upon further review, FRA agrees with the recommendation to collect data on broken drawbars as part of the ''draft system.'' [1] To accomplish this, FRA is updating the data field description in Form FRA F 6180.277 field IDs F16 through F16.C by replacing the term ''broken knuckles'' with ''train separations due to broken couplers and draft gear.'' Additionally, FRA changed the term ''knuckles'' to ''couplers'' in field IDs F16 through F16.C to be consistent with railroad terminology used in FRA's regulations. Further, FRA updated the form instructions in field ID F2 to ''The reporting railroad alphabetic code must match the code used in the submission of Form FRA F 6180.54 to FRA'' to make it clear which data are being requested.

FRA also acknowledges the omission of the word ''certification'' and is updating the language throughout Form FRA F 6180.277 from ''engineer revocations'' to ''engineer certification revocations''. FRA has uploaded the updated form in the PRA docket referenced above at *https://www.regulations.gov/docket/FRA-2023-0002/document.* From that page, Form FRA F 6180.277 can be accessed by using the ''refine results'' menu to the left of the screen. Under ''Document Type'' check the box labeled ''Supporting & Related Material'' and the form will be displayed under the search results.

The Coalition to Stop CPKC commented that FRA is silent on the extent to which the reported data would be publicly available. FRA is planning to analyze the collected data and may publicly share the data or FRA's analysis in reports, testimony, or other safety-related agency actions.

In the proposed ICR, FRA stated that the proposal would require Class I

[1] *See* 49 CFR 229.61.

freight railroads to provide FRA with the information in Form FRA F 6180.277 on a monthly basis [2] without specifying when it would expect the form to be submitted. The proposed ICR also stated that ''FRA is not asking railroads to provide train length information for any FRA-reportable accident or incident'' that a railroad is required to report to FRA on a form under the agency's existing requirements so as to avoid seemingly duplicative reporting.[3] As each railroad is required under the existing reporting regulation to submit required forms within 30 days after expiration of the month during which the accidents/incidents occurred,[4] FRA is clarifying that the same 30-day submission and monthly reporting period applies to this information collection request. Requesting this information collection in conjunction with the existing reporting requirements will enable each Class I freight railroad to coordinate its submissions and avoid duplicative reporting as previously described.

Before OMB decides whether to approve this proposed collection of information, it must provide 30 days' notice for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. *See* 44 U.S.C. 3507(b)–(c), 5 CFR 1320.12(d), 60 FR 44978, 44983, Aug. 29, 1995.

The 30-day notice both informs and gives the regulated community the opportunity to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. *See* 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICR regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Class I Freight-Train Length Reporting.

OMB Control Number: 2130–NEW.

Abstract: On May 2, 2023, FRA issued Safety Advisory 2023–03, ''Accident Mitigation and Train Length,'' (Safety Advisory) to ensure railroads and railroad employees are aware of the potential complexities associated with operating longer trains and to recommend that they take appropriate measures to address those complexities to ensure the safe operation of such trains.[5] The Safety Advisory cited three significant incidents that occurred since 2022 involving trains with more than 200 cars, each approximately more than 10,000 feet in length and weighing more than 17,000 trailing tons, where train handling and train makeup are believed to have caused, or contributed to, the accidents and incidents. In the Safety Advisory, FRA explained that the operation of these longer trains presents different, complex, operational challenges which can be exacerbated by the weight and makeup of trains. Consequently, FRA recommended that railroads review their operating rules and existing locomotive engineer certification programs to address operational complexities of train length, take appropriate action to prevent the loss of communications between end-of-train devices, and mitigate the impacts of long trains on blocked crossings.[6]

In the Safety Advisory, FRA also explained that, in 2019, the U.S. Government Accountability Office (GAO) issued a report finding that freight-train length, particularly for Class I railroads, increased in recent years.[7] GAO was able to procure limited data from some of the railroads, including data indicating average train lengths of 6,100 feet and 7,500 feet from two Class I railroads.[8] The data represent an increase in the average length of a train of about 25 percent for both railroads over a 10-year period.[9] Each Class I railroad reportedly told GAO that they operate some number of longer trains, with one railroad reporting that it operates a train on a regular basis over 12,000 feet long and another railroad operating a train on a regular basis over 16,000 feet long.[10] These same railroads responded that trains over 10,000 feet long were only 1 to 2 percent of their total train-miles.[11]

In the Safety Advisory, FRA also indicated that it was in the process of conducting research on the operational complexities of longer trains, including air brake system performance and resulting train dynamics.[12] The Safety Advisory also noted that, in response to a statutory requirement, FRA entered into an agreement with the National Academies of Sciences, Engineering, and Medicine (NAS) to examine factors associated with the operation of freight trains longer than 7,500 feet. FRA notes, however, that any data collected from the industry during these studies may be no more detailed or complete than the data GAO was able to obtain from the railroads for its report.[13]

As a next step, FRA is initiating a new ICR to gather train length data from Class I freight railroads as the safety concerns associated with long trains largely focus on these railroads.[14] Specifically, under the proposed information collection, Class I freight railroads would provide to FRA, on a monthly basis, data regarding the total number of trains operated, the total quantity of rolling equipment in those trains, and the total trailing tonnage in specified train length categories (*e.g.,* less than or equal to 7,500 feet, greater than 7,500 feet). In addition, FRA proposes to collect data from the Class I freight railroads that may inform potential complexities and safety concerns associated with operating longer trains, such as the number of emergency events, communication loss events, train separations due to broken couplers and draft gear, air hose separations, positive train control enforcements, and the number of locomotive engineer certification revocations under 49 CFR part 240 and conductor certification revocations under 49 CFR part 242. The requested data will be collected monthly using an Excel-based form (Form FRA F 6180.277).

The data collection is necessary to create an industry-wide database that will allow FRA to make objective

[2] 88 FR 47233 at 47234.

[3] *Id.* and 49 CFR part 225.

[4] 49 CFR 225.11(b).

[5] 88 FR 27570.

[6] *Id.*

[7] *Id.* (citing GAO's May 2019 report titled RAIL SAFETY: Freight Trains Are Getting Longer, and Additional Information is Needed to Assess Their Impact, GAO–19–443 (available at *https://www.gao.gov/assets/gao-19-443.pdf*).

[8] *Id.* at 11.

[9] *Id.*

[10] *Id.* at 12.

[11] *Id.*

[12] *https://railroads.dot.gov/sites/fra.dot.gov/files/2022-2/2023_RDT_CurrentProjects_complete_FINAL.pdf.*

[13] Information about NAS's study and its meeting agendas are available at *https://www.nationalacadameies.org/our-work/impacts-of-trains-longer-than-7500-feet.* The study was required by the Infrastructure Investment and Jobs Act, Public Law 117–58, 22422, 35 Stat. 751 (2021).

[14] This ICR is limited to Class I railroads.

findings to support guidance or recommendations to the industry, or regulatory action. Of note, FRA is seeking to collect data on train length on an ongoing basis, as opposed to this being a one-time study. FRA will use the collected data to establish an initial baseline for the length of trains operating within the U.S. rail system as well as to determine if train lengths are changing over time. FRA may also use the collected data in future analyses to better understand the impact of train length on safety: *e.g.,* to determine whether trains of certain lengths are disproportionately involved in certain type of accidents/incidents or other undesired events such as loss of communications or train stalling.

FRA has incorporated several measures to minimize respondents' paperwork burden in this proposed collection. For example, to avoid duplicating efforts, FRA is not asking railroads to provide train length information for any FRA-reportable accident or incident for which a Form FRA F 6180.54 is filed. Instead, for any train involved in an accident for which a Form FRA F 6180.54 is filed, FRA will review train length data collected on that form and will not seek to collect the same data proposed in this collection.

As provided by Congress to the Secretary of Transportation, and as delegated, FRA has broad statutory authority to oversee matters related to rail safety.[15] As noted in the Safety Advisory, the greater operational complexities associated with longer trains necessitate that railroads take appropriate safety measures to manage their potentially more complex in-train forces. This proposed collection is a component of FRA's ongoing research to closely monitor and analyze the impact of train length on rail safety.

Type of Request: Approval of a new collection of information.

Affected Public: Businesses.

Form(s): Form FRA F 6180.277.

[15] 49 U.S.C. 20103(a).

Respondent Universe: Class I freight railroads.

Frequency of Submission: Monthly/recurring.

Total Estimated Annual Responses: 72 reports.

Total Estimated Annual Burden: 576 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $49,496.

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Allison Ishihara Fultz,

Chief Counsel.

[FR Doc. 2024–01044 Filed 1–19–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

United States Mint

Pricing for Liberty & Britannia Products

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is setting prices for the Liberty & Britannia Products.

24YA	Liberty & Britannia 24K High Relief Gold Proof Coin.	Per grid.
24YB	Liberty & Britannia Silver Proof Medal.	$89.00.

FOR FURTHER INFORMATION CONTACT: Ann Bailey, Sales and Marketing, United States Mint, 801 9th Street NW, Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5111, 5112, & 9701.

Eric Anderson,

Executive Secretary, United States Mint.

[FR Doc. 2024–01091 Filed 1–19–24; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF THE TREASURY

United States Mint

Prices of Liberty & Britannia 24K High Relief Gold Proof Coin on the ''2024 Pricing of Numismatic Gold, Commemorative Gold, Platinum, and Palladium Products'' Grid

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint announces pricing for the Liberty & Britannia 24K High Relief Gold Proof Coin on the 2024 Pricing of Numismatic Gold, Commemorative Gold, Platinum, and Palladium Products Grid.

The complete 2024 Pricing of Numismatic Gold, Commemorative Gold, Platinum, and Palladium Products Grid will be available online at *https://catalog.usmint.gov/coin-programs/american-eagle-coins.*

Pricing can vary weekly dependent upon the London Bullion Market Association gold, platinum, and palladium prices weekly average. The pricing for all United States Mint numismatic gold, platinum, and palladium products is evaluated every Wednesday and modified as necessary.

FOR FURTHER INFORMATION CONTACT: Ann Bailey, Sales and Marketing Directorate, United States Mint, 801 9th Street NW, Washington, DC 20220; or call 202–354–7500 or *Rosa.Williams@usmint.treas.gov.*

Authority: 31 U.S.C. 5112 & 9701.

Eric Anderson,

Executive Secretary, United States Mint.

[FR Doc. 2024–01093 Filed 1–19–24; 8:45 am]

BILLING CODE 4810–37–P

FEDERAL REGISTER

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Part II

Department of Homeland Security

Federal Emergency Management Agency

44 CFR Part 206

Individual Assistance Program Equity; Interim Final Rule

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 206

[Docket ID: FEMA–2023–0003]

RIN 1660–AB07

Individual Assistance Program Equity

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) is publishing this interim final rule (IFR) amending its regulations governing the Individual Assistance program to increase equity by simplifying processes, removing barriers to entry, and increasing eligibility for certain types of assistance under the program.

DATES:

Effective Date: This rule is effective March 22, 2024.

Applicability Date: This rule applies to Emergencies and Major Disasters declared on or after March 22, 2024.

Comment Date: Comments must be received no later than July 22, 2024.

ADDRESSES: You may submit comments, identified by Docket ID: FEMA–2023–0003, via the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Kristina McAlister, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472. Phone: 866–826–8751 or email: *FEMA-IHP-Policy@fema.dhs.gov.*

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Table of Abbreviations

ADA—Americans with Disabilities Act
APA—Administrative Procedure Act
CATEX—Categorical Exclusions
CDBG–DR—Community Development Block Grant Disaster Recovery Program
CEQ—Council on Environmental Quality
CFR—Code of Federal Regulations
CNA—Critical Needs Assistance
CPI–U—Consumer Price Index for All Urban Consumers
CRA—Congressional Review of Agency Rulemaking Act
CTHA—Continued Temporary Housing Assistance
DCM—Disaster Case Management
DHAP—Disaster Housing Assistance Program
DHS—Department of Homeland Security
DHS–OIG—Department of Homeland Security's Office of Inspector General
DMA2K—Disaster Mitigation Act of 2000
DRC—Disaster Recovery Center
DRRA—Disaster Recovery Reform Act of 2018
EA—Environmental Assessment
EDW—Enterprise Data Warehouse
EIS—Environmental Impact Statement
ESA—Endangered Species Act
FCO—Federal Coordinating Officer
FDAA—Federal Disaster Assistance Administration
FEMA—Federal Emergency Management Agency
FIT—Failed Income Test
FmHA—Farmers Home Administration
FMR—Fair Market Rent
FVL—FEMA Verified Loss
FY—Fiscal Year
GAO—Government Accountability Office
GFIP—Group Flood Insurance Policy
GSA—U.S. General Services Administration
HA—Housing Assistance
HUD—U.S. Department of Housing and Urban Development
IA—Individual Assistance
IAPPG—Individual Assistance Program and Policy Guide
IFG—Individual and Family Grant Program
IFR—Interim Final Rule
IHP—Individuals and Households Program
IRS—Internal Revenue Service
JFO—Joint Field Office
LEP—Limited English Proficiency/Limited English Proficient
LER—Lodging Expense Reimbursement
LI—Lower Income
MLR—Multifamily Lease and Repair
NEMIS—National Emergency Management Information System
NEPA—National Environmental Policy Act of 1969
NFIA—National Flood Insurance Act of 1968, as Amended
NFIP—National Flood Insurance Program
NHPA—National Historic Preservation Act
NPRM—Notice of Proposed Rulemaking
OIG—Office of Inspector General
OMB—Office of Management and Budget
ONA—Other Needs Assistance
PHC—Permanent Housing Construction
PHP—Permanent Housing Plan
PIA—Privacy Impact Assessment
PKEMRA—Post-Katrina Emergency Management Reform Act of 2006
RA—Regional Administrator
RA—Rental Assistance
RFA—Regulatory Flexibility Act of 1980
RFI—Request for Information
RIA—Regulatory Impact Analysis
RPFVL—Real Property FEMA Verified Loss
SBA—Small Business Administration
SFHA—Special Flood Hazard Area

SRIA—Sandy Recovery Improvement Act of 2013
Stafford Act—Robert T. Stafford Disaster Relief and Emergency Assistance Act, as Amended
STT—State, Tribal, or Territorial
Treasury—U.S. Department of Treasury
TSA—Transitional Sheltering Assistance
USGCRP—U.S. Global Change Research Program
Welfare Reform Act—Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

I. Public Participation

We encourage you to participate in this rulemaking by submitting comments and related materials. We will consider all comments and materials received during the comment period.

If you submit a comment, identify the agency name and the Docket ID for this rulemaking, indicate the specific section of this document to which each comment applies, and give the reason for each comment. All submissions will be posted, without change, to the Federal e-Rulemaking Portal at *www.regulations.gov* and will include any personal information you provide. Therefore, submitting this information makes it public. For more about privacy and the docket, visit *https://www.regulations.gov/document?D=DHS-2018-0029-0001.*

Viewing comments and documents: For access to the docket to read background documents or comments received, go to the Federal e-Rulemaking Portal at *http://www.regulations.gov.*

II. Executive Summary

The Federal Emergency Management Agency (FEMA) is publishing this interim final rule (IFR) amending its regulations governing the Individual Assistance program to increase equity by simplifying processes, removing barriers to entry, and increasing eligibility for certain types of assistance under the program. Specifically, the IFR increases eligibility for home repair assistance by amending the definitions and application of the terms safe, sanitary, and functional, allowing assistance for certain accessibility-related items, and amending its approach to evaluating insurance proceeds; allows for the re-opening of the applicant registration period when the President adds new counties to the major disaster declaration; simplifies the documentation requirements for continued temporary housing assistance; simplifies the appeals process; simplifies the process to request approval for a late registration; removes the requirement to apply for a Small Business Administration (SBA) loan as a condition of eligibility for Other Needs Assistance (ONA); and establishes additional eligible assistance under ONA for serious needs, displacement, disaster-damaged computing devices and essential tools for self-employed individuals. FEMA also makes revisions to reflect changes to statutory authority that have not yet been implemented in regulation, to include provisions for utility and security deposit payments, lease and repair of multifamily rental housing, child care assistance, maximum assistance limits, and waiver authority.

III. Background

A. Individual Assistance

FEMA is responsible for administering and coordinating the Federal Government response to Presidentially declared disasters pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (Stafford Act), Public Law 93–288, 42 U.S.C. 5121 *et seq.* When a catastrophe occurs in a State or affects the members of a Tribal community, the State's Governor or Tribal Chief Executive may request a Presidential declaration of a major disaster pursuant to Section 401 of the Stafford Act. 42 U.S.C. 5170(a), (b); 44 CFR 206.36(a). Such a request must be based on a finding that the disaster is of such severity and magnitude that an effective response is beyond the capabilities of the State or Tribal government and the affected local governments and that Federal assistance is necessary. 42 U.S.C. 5170. The President's declaration of a disaster will designate the areas within a State, or for an Indian Tribal government, where Federal assistance may be made available (including local governments such as counties, parishes, or Tribal lands, if appropriate) and identify the types of assistance that are authorized under the declaration, 44 CFR 206.40(a), although other types may be authorized later, 44 CFR 206.40(c). A major disaster declaration may authorize all, or only particular types of, supplemental Federal assistance requested by the Governor or Tribal Chief Executive. 44 CFR 206.40(a).

One of those types is ''Federal Assistance to Individuals and Households'' governed by section 408 of the Stafford Act, which authorizes FEMA to provide financial assistance and direct services to individuals and households who, as a direct result of a major disaster, have necessary expenses and serious needs in cases in which the individuals and households are unable to meet such expenses or needs through other means. 42 U.S.C. 5174. FEMA refers to this assistance as the Individuals and Households Program (IHP).

Section 408 categorizes IHP into two provisions of assistance: Housing Assistance (HA) and ONA. Housing Assistance is available for individuals and households who are displaced from their pre-disaster primary residences [1] or whose pre-disaster residences are rendered uninhabitable or, for individuals with disabilities, inaccessible or uninhabitable, as a result of damage caused by a major disaster. 42 U.S.C. 5174(b). FEMA may provide those individuals: (1) temporary housing assistance in the form of financial assistance (funds provided to an individual to reimburse for hotels, motels, or other short-term lodging (referred to as Lodging Expense Reimbursement, or LER) or to rent alternate housing accommodations while the individual is displaced from their primary residence) or direct assistance (FEMA may provide the individual temporary housing units or FEMA may lease and repair multifamily rental properties (referred to as Multifamily Lease and Repair, or MLR) for the purpose of housing individuals); (2) financial assistance to repair owner-occupied private residences, utilities, and residential infrastructure damaged by a major disaster to a safe and sanitary living or functioning condition (referred to as home repair assistance); (3) financial assistance to replace owner-occupied private residences damaged by a major disaster (referred to as home replacement assistance); and (4) in rare circumstances, financial or direct assistance to construct permanent or semi-permanent housing (referred to as Permanent Housing Construction, or PHC). 42 U.S.C. 5174(c).

ONA is financial assistance FEMA makes available to individuals and households adversely affected by a disaster to address their necessary expenses and serious needs.[2] FEMA

[1] Per 44 CFR 206.111 ''primary residence'' means the dwelling where the applicant normally lives, during the major portion of the calendar year; or the dwelling that is required because of proximity to employment, including agricultural activities, that provide 50 percent of the household's income. Home Repair Assistance and Home Replacement Assistance are not available for non-traditional forms of housing that do not have structural elements to assess and calculate a repair or replacement award *(e.g.,* tents). By policy, FEMA defines non-traditional housing as a form of dwelling void of structural floor, structural walls, and structural roof. See page 62 of IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

[2] 42 U.S.C. 5174(e).

awards two types of ONA: SBA-dependent, which provides assistance for personal property, transportation, and Group Flood Insurance Policies (GFIPs); and non SBA-dependent ONA, which provides funeral assistance, medical and dental assistance, childcare assistance, moving and storage assistance, critical needs assistance, cleaning and sanitizing assistance as well as assistance for miscellaneous items.[3] To obtain SBA-dependent ONA, FEMA currently requires individuals above a certain income level, as identified in SBA-provided income test tables, to apply for a disaster loan from SBA; SBA-dependent ONA includes Personal Property Assistance, Transportation Assistance, and GFIP.[4] If those individuals were denied for a loan by the SBA or the amount received did not satisfy their total necessary expenses, FEMA could provide them with assistance for SBA-dependent types of ONA. Prior to this rule's revisions, these provisions were located in 44 CFR 206.119(a). FEMA did not require application to the SBA for individuals below the relevant income threshold or for other types of ONA.[5]

As detailed further below, section 1212 of the Disaster Recovery Reform Act of 2018, Public Law 115–254, 132 Stat. 3448 (Oct. 5, 2018) amended Section 408(h) to establish separate caps for each category of assistance. Currently, the maximum amount of IHP HA and ONA financial assistance for any single emergency or major disaster is $42,500.[6] These financial caps do not apply to the provision of financial assistance to rent alternate housing accommodations or necessary expenses for individuals with disabilities. 42 U.S.C. 5174(h).[7] The Federal cost-share under IA is 100 percent for HA and 75 percent for ONA (with the State responsible for the 25 percent non-Federal share). 42 U.S.C. 5174(g).

FEMA may only provide housing assistance for a period not to exceed 18 months from the date of the major disaster declaration, although it may extend this period of assistance if it determines that due to extraordinary circumstances an extension would be in the public interest. 42 U.S.C. 5174(c)(1)(B)(iii); 44 CFR 206.110(e). FEMA is required to ensure it has systems in place to allow it to verify the identity and address of recipients for assistance, minimize the risk of making duplicate or fraudulent payments, collect any duplicate payments, provide instructions to individuals detailing the proper use of assistance, and conduct an expedited and simplified review and appeal process for individuals denied assistance. 42 U.S.C. 5174(i).

FEMA is required to ensure that the disaster assistance it provides is not a duplication of benefits with any other program or from insurance or any other source. 42 U.S.C. 5155(a). FEMA has set forth a regulatory delivery sequence at 44 CFR 206.191(d) which was further clarified in its Individual Assistance Program and Policy Guide (IAPPG) [8] to establish the order in which disaster relief agencies and organizations provide assistance to disaster survivors and ensure its assistance does not result in a prohibited duplication of benefits. Currently, the delivery sequence is, in order of delivery: (i) Volunteer Agencies and Mass Care; (ii) Insurance; (iii) FEMA Housing Assistance; [9] (iv) FEMA/State/Territory/Tribal Government ONA; [10] (v) SBA Income Evaluation (Repayment Capability) which will either result in an SBA referral or FEMA/State ONA; [11] and (vi) Unmet Needs—Volunteer Agencies.[12]

B. Impacts of Climate Change on Disaster Assistance

Climate change—changes in the average or variability of weather conditions that persist over long time scales (*e.g.,* multiple decades or longer) [13]—and related global changes can threaten human health; the economy; the built environment; and the natural world, including wildlife, plants, and the ecosystems upon which they rely.[14] Many scientists, governments, and organizations have researched climate change, documented its experienced effects, projected potential effects, and undertaken activities to respond to it.[15] Scientists have demonstrated the effects of climate change are already realized around the world, and they project that climate changes will intensify in future decades.[16]

The issue of climate change impacts and implementing solutions is incredibly challenging and complex. Climate change poses a direct threat to the security of our Nation in the form of increasingly severe and unpredictable storms, flooding, and wildfires that disproportionately impact some of

[3] See page 146 of FEMA Policy (FP) 104–009–03, Individual Assistance Program and Policy Guide, Version 1.1 (IAPPG 1.1). *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

[4] Applicants whose pre-disaster home was located in a Special Flood Hazard Area and received assistance for insurable flood damaged real or personal property may be considered for a FEMA-purchased GFIP certificate, which provides 3 years of flood insurance coverage.

[5] The SBA provides FEMA with the relevant income threshold information on a yearly basis. The income threshold used is determined by the individual's household situation and accounts for where the individual resides and the number of dependents living in the household.

[6] See 88 FR 72520, Oct. 20, 2023. Section 408 caps the amount of assistance individuals may receive under IA for HA to $25,000 and for ONA to $25,000. These caps are adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers (CPI–U) published by the Department of Labor.

[7] DRRA amended this section to exclude financial housing assistance and necessary expenses for individuals with disabilities from those caps.

[8] See page 10 of IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

[9] This includes both financial and direct Housing Assistance. For financial, this encompasses Lodging Expense Reimbursement, Rental Assistance, Repair Assistance, and Replacement Assistance, and for direct, this includes Multifamily Lease and Repair, Transportable Temporary Housing Units, Direct Lease, and Permanent Housing Construction.

[10] This includes the following types of non-SBA-dependent ONA: Funeral Assistance, Medical and Dental Assistance, Child Care Assistance, Moving and Storage Assistance, Assistance for Miscellaneous Items, and, under this rule, Critical Needs Assistance and Clean and Sanitize Assistance.

[11] SBA-dependent ONA includes Personal Property Assistance, Transportation Assistance, and Group Flood Insurance Policy.

[12] See page 10 of IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

[13] C.R.S. Rep 46694, Climate Change Adaptation: Department of the Interior, at 1 (2021) available at *https://crsreports.congress.gov/product/pdf/R/R46694;* for example, see definitions of climate and climate change at U.S. Global Change Research Program (USGCRP), ''Glossary,'' at *https://www.globalchange.gov/climate-change/glossary,* and Intergovernmental Panel on Climate Change, ''Definition of Terms Used Within the Data Distribution Centre: Glossary,'' at *https://www.ipcc-data.org/guidelines/pages/glossary/glossary_c.html.* This report does not address the causes of multidecadal climate change. For a discussion of climate change science, see CRS Report R43229, Climate Change Science: Key Points, by Jane A. Leggett. For additional background on climate change, see CRS In Focus IF11446, Weather and Climate Change: What's the Difference? by Jane A. Leggett.

[14] Alexa Jay *et al.,* ''Overview,'' in Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, vol. II, eds. David Reidmiller *et al.* (Washington, DC: U.S. USGCRP, 2018), pp. 33–71 (hereinafter, assessment cited as Reidmiller *et al.,* Impacts, Risks, and Adaptation).

[15] For example, the USGCRP is a Federal program mandated by Congress through P.L. 101–606 with the stated purpose of developing and coordinating ''a comprehensive and integrated United States research program which will assist the Nation and the world to understand, assess, predict, and respond to human-induced and natural processes of global change.'' For more information, see USGCRP, ''About USCGRP,'' at *https://www.globalchange.gov/about.* The IPCC ''is the United Nations body for assessing the science related to climate change'' (IPCC, ''About the IPCC,'' at *https://www.ipcc.ch/about/*).

[16] For example, see IPCC, ''Synthesis Report of the IPCC Sixth Assessment Report (AR6), Summary for Policymakers'' at 4–6, 12–13 (Mar. 20, 2023), *https://www.ipcc.ch/report/sixth-assessment-report-cycle/;* Economic Report of the President at 275, 280, 282–84 (March 2023), *https://www.whitehouse.gov/wp-content/uploads/2023/03/ERP-2023.pdf.*

America's most vulnerable communities.[17] Climate change disasters, such as heatwaves, can take place over longer time scales or broader geographic areas than other more acute disruptions. Other impacts, such as ''nuisance flooding'' are less intense but more chronic. This requires us to think differently about emergency response.[18]

The Nation is no stranger to historic and costly hurricane seasons. The 2017 Atlantic hurricane season was one of the most active in U.S. history; between April and November, there were 17 named storms, with 10 becoming hurricanes.[19] As of October 9, 2017, FEMA received more applications for the Individuals and Households Program than in hurricanes Katrina, Rita, Wilma and Sandy combined. By November 30, 2017, FEMA registered more than 4.7 million households for the Individuals and Households Program.[20] These hurricanes were accompanied by devastating wildfires in California that burned for months. The President's 2023 Economic Report [21] recounts that Hurricane Ian struck Florida in September 2022, causing a coastal storm surge of up to 18 feet and widespread inland flooding; it will end up being one of the costliest storms on record, with losses to residential and commercial property estimated at between $36 billion and $62 billion.[22] Climate change has elevated the need for the delivery of efficient disaster services and increased the need for IHP assistance, particularly for socially vulnerable populations, which are disproportionately impacted.[23] In response and in a step towards equity, the regulatory changes in this rule seek to add efficiency in the delivery of assistance to survivors by simplifying processes, removing barriers to entry, and increasing eligibility for certain types of assistance under the program. For example, the changes seek to streamline documentation requirements, thus easing entry into the Individuals and Households Program. Each regulatory change to follow is influenced by the growing emergency needs of citizens across the Nation, which has meant the trend of growing FEMA participation and responsibility for response.

Presently coastal areas globally face land loss, repeat flooding, and storm surges, affecting coastal populations.[24] Extreme weather events are increasing in intensity as well as frequency.[25] Sustained changes in climate have exacerbated the physical risks and threats coastal communities are exposed to every day.

As climate change threatens to bring more extreme events like increased floods, sea level rise, and intensifying droughts and wildfires, is our responsibility to better prepare and support communities, families, and businesses before, during, and after disasters. Here, in light of the increasing climate-related disasters facing the Nation, FEMA issues amendments to the Individuals and Households Program to ensure that it meets the increasing need for assistance to individuals and families recovering from disasters.

C. Equity in Individual Assistance

1. Income Project

There have been numerous assertions over the years that IHP disproportionately benefits higher income households over lower income households.[26] In 2019, FEMA undertook an analysis to determine if this was true (Income Project).[27] FEMA analyzed 5 years of disaster data (January 1, 2014–December 31, 2018) which comprised 4.8 million registrations.

In July 2019, FEMA completed Phase 1 of the project.[28] Phase 1 results showed that of the FEMA registrants during that time period, 62 percent were ''lower income,'' 10 percent were ''middle income,'' and 28 percent were ''higher income.'' [29] FEMA concluded generally that lower income households were more likely to receive an award, or, in other words, have a higher award *rate* under the Individuals and Households Program, but that the average award *amount* was lower for those households than for higher income households.

The data proved to be more varied at the assistance type level. FEMA compared the rate of applicants referred to IHP for further consideration,[30] award

[17] Fourth National Climate Assessment, Volume II: Impacts, Risks, and Adaptation in the United States, *https://nca2018.globalchange.gov/#sf-2.*

[18] DHS Strategic Framework for Addressing Climate Change (Oct. 21, 2021), *https://www.dhs.gov/sites/default/files/publications/dhs_strategic_framework_10.20.21_final_508.pdf.*

[19] 2017 Hurricane Seasons FEMA After-Action Report, at v (July 12, 2018), 2017 Hurricane Season FEMA After-Action Report.

[20] 2017 Hurricane Seasons FEMA After-Action Report, at 39 (July 12, 2018), 2017 Hurricane Season FEMA After-Action Report.

[21] See Economic Report of the President at 282 (March 2023), *https://www.whitehouse.gov/wp-content/uploads/2023/03/ERP-2023.pdf.*

[22] CoreLogic, ''CoreLogic Analysis Shows Final Estimated Insured and Uninsured Damages for Hurricane Ian to Be Between $41 Billion and $70 Billion'' (2022), *www.corelogic.com/press-releases/corelogic-analysis-shows-final-estimated-insured-and-uninsured-damages-for-hurricane-ian-to-be-between-41-billion-and-70-billion/.* Paquette, D., and M. Kornfield, ''Ian Is Florida's Deadliest Hurricane Since 1935; Most Victims Drowned'' (Oct. 5, 2022), *https://www.washingtonpost.com/nation/2022/10/05/hurricane-ian-florida-victims/.*

[23] See, *e.g.,* EPA, Climate Change and Social Vulnerability in the United States: A Focus on Six Impacts, (September 2021), *https://www.epa.gov/cira/social-vulnerability-report.* The EPA's report analyzed four socially vulnerable groups: low income, minority, no high school diploma, and 65 or older. See *Id.* at 4, Table ES.1—Socially Vulnerable Groups Analyzed in this Report.

[24] Maldonado, J., Wang, I.F.C., Eningowuk, F. *et al.* Addressing the challenges of climate-driven community-led resettlement and site expansion: knowledge sharing, storytelling, healing, and collaborative coalition building, *J Environ Stud Sci* 11, 294–304 (2021), *https://doi.org/10.1007/s13412-021-00695-0.*

[25] Maldonado, J., Wang, I.F.C., Eningowuk, F. *et al,* Addressing the challenges of climate-driven. community-led resettlement and site expansion: knowledge sharing, storytelling, healing, and collaborative coalition building, *J Environ Stud Sci* 11, 294–304 (2021), *https://doi.org/10.1007/s13412-021-00695-0.*

[26] See The Hill, *Disaster Housing Recovery: Time for Congress to Act* (November, 26, 2018) (''FEMA consistently creates barriers that prevent low-income people from receiving assistance . . . FEMA is unwilling and incapable of handling the housing needs of low-income disaster survivors,'') *https://thehill.com/opinion/civil-rights/418175-disaster-housing-recovery-time-for-congress-to-act* (last visited Nov. 29, 2021); Texas Housers, *Low-income Households Disproportionately Denied by FEMA is a Sign of a System that is Failing the Most Vulnerable* (November 30, 2018) (''Homeowner households with fewer financial resources were more likely to be denied FEMA assistance after Harvey,'') *https://texashousers.org/2018/11/30/low-income-households-disproportionately-denied-by-fema-is-a-sign-of-a-system-that-is-failing-the-most-vulnerable/* (last visited Nov. 29, 2021); NPR, *How Federal Disaster Money Favors the Rich* (March 5, 2019) (''Disasters, and the federal aid that follows, disproportionately benefit wealthier Americans'') *https://www.npr.org/2019/03/05/688786177/how-federal-disaster-money-favors-the-rich* (last visited Nov. 29, 2021).

[27] FEMA, *Individuals & Households Program Survivor Income Analysis* (2019) and *Survivor Income Analysis: Phase 2—Drivers of variance in IHP assistance across income groups* (2019). See Supporting & Related Material tab on *www.regulations.gov* under Docket ID: FEMA–2023–0003.

[28] For Phase 1 of the Income Project, the average repair/replacement award size for lower income owners is $2,165 while the average award size for higher income owners is $4,139. For Personal Property Assistance, the average award size for lower income owners is $819, while the average award size for higher income owners $2,093. For Personal Property Assistance, the average award size for lower income renters is $900, while the average award size for higher income renters is $2,110.

[29] FEMA, *Individuals & Households Program Survivor Income Analysis* (2019) and *Survivor Income Analysis: Phase 2—Drivers of variance in IHP assistance across income groups* (2019). See Supporting & Related Material tab on *www.regulations.gov* under Docket ID: FEMA–2023–0003. FEMA defines Lower income as a combination of low, very low, and extremely low-income. As defined by HUD, Extremely Low income means Income at or below the national poverty threshold or 30% of the Area Median Income, whichever is less; Very Low income means Income between >30% and 50% of AMI; and Low Income means Income between >50% and 80% of AMI. (See Page 5 of the Income Analysis).

[30] The term ''referred to IHP'' reflects terminology FEMA uses in the implementation of IHP.

Continued

rates, and award amounts of lower income households to higher income households for home repair/replacement financial assistance, rental housing financial assistance, personal property financial assistance, direct housing assistance, and transitional shelter assistance.

The data received indicates that lower income households were referred for assistance at a higher *rate* than were higher income households for all types of assistance except direct housing but were awarded assistance in lower *amounts* for repair and replacement assistance and personal property. Specifically, FEMA found the following:

Table 1— Percentages of Lower Income (LI) as Compared to Higher Income Households for Referral Rates, Award Rates, and Award Amounts

	LI Referral Rate	LI Award Rate	LI Award Amounts
Repair/Replacement	+8%	+49%	(48%)
Rental	+8%	(4%)	+2%
Personal Property	+10x[31]	(21%)	(62%)
Direct Housing	(45%)	+80%	+3%
Transitional Shelter Assistance	Similar[32]	+84%	+67%

In November 2019, FEMA completed Phase 2 of the project in which it focused on additional analysis of the data to determine the cause of the variance in results between lower and higher income applicants. FEMA found that: (1) higher income households were less likely to receive an award for home repair/replacement assistance because they were more likely to have insurance which covered their losses; (2) lower income households received lower award amounts for home repair/replacement because they had lower Real Property FEMA Verified Loss (RPFVL),[33] smaller homes, and were more likely to live in mobile homes which may be smaller or less expensive than non-mobile homes; (3) lower income households were less likely to receive an award for rental assistance because they were more likely to be found ineligible as a result of their home being habitable than higher income households; (4) lower income households were less likely to be eligible for personal property assistance, but the results were inconclusive and FEMA could not identify the primary driver of the difference; (5) lower income households were likely to have a lower award amount for personal property assistance but FEMA could not account for the reason why, although home size might be a factor; and (6) using a RPFVL per square foot threshold instead of a flat RPFVL threshold for direct housing would increase the proportion of lower income owners and decrease the proportion of higher income owners who qualified for direct housing.[34]

2. Equity RFI—IA Program Equity Responses to Comments

On January 20, 2021, President Joseph R. Biden signed Executive Order 13985, ''Advancing Racial Equity and Support for Underserved Communities [35] Through the Federal Government.'' [36] On January 20, 2021, President Joseph R. Biden signed Executive Order 13990, ''Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis.'' [37] On January 27, 2021, President Joseph R. Biden signed Executive Order 14008, ''Tackling the Climate Crisis at Home and Abroad.'' [38] And, on February 16, 2023, President Joseph R. Biden signed Executive Order 14091, ''Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.'' [39]

Consistent with those Executive Orders and to gain additional information on the issues identified in the 2019 income project, on April 22, 2021, FEMA published a Request for Information (RFI) on FEMA Programs, Regulations, and Policies.[40] FEMA sought public input on its programs, regulations, collections of information, and policies for the agency to ensure that its programs, regulations, and policies contain necessary, properly tailored, and up-to-date requirements that effectively achieve FEMA's mission in a manner that furthers the goals of advancing equity for all, including those in underserved communities; bolstering resilience from the impacts of climate change, particularly for those disproportionately impacted by climate change; and environmental justice.

FEMA held public meetings and extended the comment period on the RFI to ensure all interested parties had sufficient opportunity to provide comments on FEMA's programs.[41] All relevant comments received in response to the request for information, including those received during the public

Applicants fill out registrations and their answers will determine some threshold eligibility factors and what types of assistance they may need or what unmet needs they have. At that point, the eligible applications are routed to the FEMA employees who process each type of assistance to make further eligibility determinations.

[31] This represents ''10 times'' or ''10× more likely'' when it comes to personal property referrals for lower income applicants.

[32] The original analysis did not include a specific breakdown for Transitional Sheltering Assistance (TSA) referral rates, but FEMA believes the rate to be in line with referral rates for non-lower-income TSA applicants.

[33] RPFVL is the total dollar amount of IHP eligible disaster-caused damage to real property as verified by FEMA.

[34] For more information on FEMA's Direct Housing Assistance see page 93 of IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

[35] Section 2.b. of Executive Order 13985 defines ''underserved communities'' as populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the definition of ''equity.'' Section 10.a. of Executive Order 14091 defines ''equity'' to mean the consistent and systematic treatment of all individuals in a fair, just, and impartial manner, including individuals who belong to communities that often have been denied such treatment, such as Black, Latino, Indigenous and Native American, Asian American, Native Hawaiian, and Pacific Islander persons and other persons of color; members of religious minorities; women and girls; LGBTQI+ persons; persons with disabilities; persons who live in rural areas; persons who live in United States Territories; persons otherwise adversely affected by persistent poverty or inequality; and individuals who belong to multiple such communities.

[36] E.O. 13985, ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,'' 86 FR 7009, Jan. 25, 2021.

[37] E.O. 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,'' 86 FR 7037, Jan. 25, 2021.

[38] E.O. 14008, ''Tackling the Climate Crisis at Home and Abroad,'' 86 FR 7619, Feb. 1, 2021.

[39] E.O. 14091, ''Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.''88 FR 10825, Feb. 22, 2023.

[40] 86 FR 21325, Apr. 22, 2021.

[41] See ''Request for Information on FEMA Programs, Regulations, and Policies; Public Meetings; Extension of Comment Period,'' 86 FR 30326, June 7, 2021.

meetings, have been posted to the public rulemaking docket on the Federal eRulemaking portal at *https://www.regulations.gov/document/FEMA-2021-0011-0001/comment.*

Comments on the RFI that are relevant to the IHP issues addressed in this rule are discussed below. Comments regarding other IA programs outside of IHP, such as Disaster Legal Services, other FEMA program areas, such as Public Assistance, or that were otherwise not directly relevant to this rule, are not discussed.

Registration Period

A few commenters raised issues regarding the registration deadline for FEMA programs, arguing that the current deadline posed difficulties for applicants—particularly for applicants from underserved populations—and should be extended.[42] One commenter stated applicants may have a wide variety of valid reasons for registering late and that requiring documentation to justify the late filing is inappropriate and unnecessary.[43] This commenter requested all registrations received during the post-deadline grace period be accepted without additional documentation.[44] Another commenter recommended removing the registration deadline altogether, saying that it was arbitrary and discouraged disaster survivors from registering.[45] This commenter also noted that disaster survivors may not realize they need assistance immediately and that even once they do, it may be difficult for them to meet the registration deadlines due to the impacts of a disaster, such as being displaced or losing telephone service. Finally, this commenter argued that FEMA should not impose a registration deadline that ends before the period of assistance for the disaster ends.

We do not agree that a registration deadline discourages disaster survivors from registering. Rather, it provides clear submission timeframes to help disaster applicants.

FEMA's regulations, at 44 CFR 206.112, provide that the standard registration period is 60 days following the date that the President declares an incident a major disaster or an emergency. FEMA may extend the registration period when the State[46] requests more time to collect registrations from the affected population. FEMA may also extend the standard registration period when necessary to establish the same registration deadline for contiguous counties or States. After the standard or extended registration period ends, FEMA accepts late registrations for an additional 60 days. FEMA processed late registrations for registrants that provided suitable documentation[47] to support and justify the reason for the delay in their registration.

FEMA required the applicant to submit a letter, signed by the applicant or person who the applicant authorizes to act on their behalf, explaining the extenuating circumstances that prevented them from applying for assistance in a timely manner. Acceptable documentation included record of hospitalization, illness, or disability of the applicant or an immediate family member; record of death for an immediate family member; or proof of personal or business travel that kept the applicant out of the area for the full registration period.[48]

Based on comments indicating that the level of documentation required to justify a late application is inappropriate and unnecessary, FEMA is removing the requirement to provide documentation. FEMA agrees that the late application process should be simplified to reduce the burden on disaster survivors. Therefore, under this rule, FEMA will only require that registrants explain the reason for the delay. This change is discussed in more detail in the section-by-section analysis, below.

FEMA believes these changes are needed to the current regulations to allow individual applicants to more easily submit a late application, but the regulations are generally sufficient to ensure the majority of disaster survivors have an adequate opportunity to register for assistance during the registration period. FEMA reaches out to survivors and communities after disasters using multiple tools, teams, and tactics to help applicants register for assistance, to include placing staff who can register applicants in disaster impacted areas and shelters.[49] Although disaster survivors may face a range of challenges in applying for assistance, the initial 60-day period is generally sufficient for most disasters, and for those specific disasters where there may be additional difficulties with timely filing, FEMA may extend the period. Increasing the default registration period or removing limits on registration altogether could lead to more applicants filing late, slowing the delivery of assistance, and increasing the administrative burden for FEMA in processing those applications.[50] The flexibility to extend the registration period on a disaster-by-disaster basis as appropriate allows FEMA to avoid unnecessary delays in program administration while still giving applicants additional time when needed, is why the registration period is not arbitrary.

Data shows that over the last 10 years, the registration period was extended past the initial 60 days authorized in 44 CFR 206.112(a) in 42 percent of Individual Assistance (IA) declarations. In 44 CFR 206.112(b), FEMA still retains the ability to extend the registration period on an as-needed basis. FEMA, in coordination with a State, Tribal, or Territorial (STT) government, can extend the registration period when there are wide-spread obstacles that may delay or impede disaster survivors' ability to register, while maintaining the authority to accept late registrations from disaster survivors who may have specific, individual circumstances that impact their opportunity to register.

[42] FEMA–2021–0011–0149, FEMA–2021–0011–0236, FEMA–2021–0011–0277, and FEMA–2021–0011–0295.

[43] FEMA–2021–0011–0149.

[44] The commenter referred to a 30-day grace period after the registration period, but as described below, FEMA actually accepts late applications for 60 days following the close of the registration period.

[45] FEMA–2021–0011–0295.

[46] To improve readability, the term ''State'' will be used in this rule to refer to State, Tribal, and Territorial governments, as applicable. Where there are relevant differences in how these governments are treated under the Stafford Act or FEMA's regulations, they will be explained in more detail.

[47] Page 71 of IAPPG 1.1 discusses late applications and the types of acceptable information FEMA required in order for the late application to be considered. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

[48] See page 71 of IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

[49] For more information see FEMA in the Field: Disaster Survivor Assistance and Disaster Recovery Centers, *https://www.fema.gov/fact-sheet/fema-field-disaster-survivor-assistance-and-disaster-recovery-centers.* FEMA currently provides letters in English and Spanish. FEMA recently updated our English and Spanish letters to include a tagline in six languages informing applicants how to contact the Helpline for translation help. The six languages are: English, Spanish, Russian, Portuguese, Vietnamese, and Korean. FEMA knows which language to provide letters in based on the language that the Disaster Survivor selected on their Disaster Assistance Registration.

[50] In response to a disaster declaration, FEMA scales up its resources including individuals working the FEMA Helpline, inspectors deploying to the field to conduct damage assessments, and staff deploying to the field to assist the Region and State in disaster recovery. Often, these individuals will staff Disaster Recovery Centers (DRCs), which are locations where individuals may register for assistance, ask questions about their application, provide documentation, etc. to FEMA or other government representatives in person. Removing a registration timeframe or increasing it beyond the current periods established in the regulations would increase the amount of time staff would need to be deployed in these various roles.

Accessibility, Language Access, and Effective Communication With People With Disabilities

Numerous commenters provided general statements about improving applicant access to FEMA assistance and the necessity for improving FEMA staff training to assist with language and accessibility needs across programs. Eight of these comments raised concerns about applicant accessibility within FEMA's IHP. Five commenters reasoned that FEMA must improve its communication access for applicants who have a primary language other than English with Limited English Proficiency (LEP),[51] as well as applicants with low-literacy and those with a disability who use another form of communication (*e.g.,* American Sign Language). These commenters stated that FEMA must provide effective translation or local FEMA employees that speak the applicant's language and can effectively explain the IHP process, as well as provide multilingual staff that can answer applicant questions during inspections, throughout registration intake, and in-person at DRCs.

Five commenters questioned FEMA's ability to adequately identify and meet the reasonable accommodation and reasonable modification needs of applicants with disabilities across the IHP service delivery process.[52] These commenters reasoned that FEMA failed to establish a clear and transparent public process for survivors to request reasonable accommodations and reasonable modifications. One commenter stated that even if a disaster survivor has requested an accommodation or a modification, FEMA has no system to indicate that they are a survivor with a disability or that they need an accommodation or a modification other than another undifferentiated note in their file.[53] Commenters explained that, consequently, these requests do not automatically populate across IHP, so FEMA staff are often unaware of an applicant's previously documented accommodation, modification, or access need. They argued that this lack of planning and transparency denies meaningful access to survivors with disabilities and inhibits their ability to access reasonable accommodations and reasonable modifications within all aspects of IHP.

Two commenters stated that IHP did not provide allowances for the inclusion of accessibility-related items for pre-existing or disaster acquired disabilities. These commenters asserted that disaster survivors with physical disabilities who require accommodations or modifications to access their home in the wake of a disaster should receive timely assistance to repair their homes.[54] Two commenters further explained that FEMA's habitability standards are inequitable and deny IHP assistance to applicants with disabilities and survivors who have low income, especially for applicants within these underserved groups who also have underlying health conditions. These commenters asserted that a habitability standard which assumes that what is safe to occupy for one person is safe to occupy for another person is wrong. They explained that because IHP policy has not considered the presence of mold a condition that would prevent an applicant from occupying a home safely, applicants with immunocompromised health conditions such as asthma, cancer, or sickle cell disease, for whom it was unsafe to live in a home with mold, were routinely denied assistance.[55]

FEMA acknowledges that voluntary agencies and community organizations are the first and last organizations to provide survivors support services in a community before and after a disaster. Therefore, FEMA's Voluntary Agency Coordination Section provides technical assistance, coordination, and subject matter expertise to partners who are addressing gaps in resources, providing financial support and additional support to survivors after government assistance is exhausted. This assistance is provided via FEMA's Voluntary Agency Liaison (VAL) staff. The function of the VALs is to coordinate voluntary activities between internal FEMA partners, local, State, and Federal Government entities and State and National Voluntary Organizations Active in Disaster; to support and build the capability of disaster recovery for current and future disasters; and to support ongoing community recovery activities even after the period of assistance has ended. VALs work directly with IA staff to ensure that all disaster survivors to include those with LEP are informed of FEMA assistance.

FEMA has many ways to meet survivors' language needs. Many FEMA employees are bilingual or multilingual and can assist LEP survivors with registration in their primary language by phone and in-person at a DRC. All DRCs have a sign posted in a visible location with the phrase ''If you do not speak English'' in over 40 languages. A DRC staff member will use that sign to determine what language the survivor speaks and call for an interpreter to assist them.

If an in-person interpreter is not present at the DRC, FEMA staff will connect the survivor with the FEMA Helpline or video relay service so the survivor is able to communicate with the FEMA employee accurately. FEMA's Helpline has interpretation services provided by qualified interpreters available in 250 languages to assist LEP disaster survivors.

FEMA recognizes that an applicant's ability to effectively communicate their reasonable accommodation or reasonable modification request is essential. To improve FEMA's ability to assist applicants with disabilities with requesting and receiving reasonable accommodations and reasonable modifications during registration, FEMA recently updated its registration process to better capture accommodations, modifications, and access assistance needs for applicants and their household members. Specifically, FEMA added questions to the Disaster Assistance Registration forms to provide applicants with an opportunity to consider, document and differentiate their household's pre-disaster and disaster-caused accommodation or modification requests and access needs. FEMA uses responses to registration questions to provide reasonable accommodations, reasonable modifications, and assistance to applicants throughout the IHP process. These questions include whether the applicant has a disability or language need that requires an accommodation or modification, or interpretation or translation services to interact with FEMA staff and/or access FEMA programs; if the applicant or anyone in their household has a disability that affects their ability to perform daily living activities or requires an assistive device; and whether they have any disability-related assistive devices or medically required equipment/supplies/support services damaged, destroyed, lost, or disrupted because of the disaster.[56]

[51] FEMA–2021–0011–0149, FEMA–2021–001–0164, FEMA–2021–0011–0261, FEMA–2021–0011–0282, and FEMA–2021–0011–0313.

[52] FEMA–2021–0011–0152, FEMA–2021–0011–0164, FEMA–2021–0011–0167, FEMA–2021–0011–0205, and FEMA–2021–0011–0313.

[53] FEMA–2021–0011–0152.

[54] FEMA–2021–0011–0164 and FEMA–2021–0011–0261.

[55] FEMA–2021–0011–0152 and FEMA–2021–0011–0164.

[56] This rulemaking clarifies that ONA includes medical service costs for the loss or injury of a service animal. See new 44 CFR 206.119(b)(3)(iv).

FEMA recently completed system updates with the new question in 2018 to ensure information provided in response to these questions at registration or provided to staff at other times are captured and easily accessible to all staff in a consistent area in the system. FEMA is also performing additional outreach to applicants with disabilities and language access needs to assist them in understanding any correspondence FEMA provides to them.[57] Applicants who state they have a disability during the registration process are placed in a prioritization queue and, if later determined ineligible for FEMA assistance, will be contacted via phone to explain their ineligibility. The field will also conduct their own outreach via phone to applicants with access and functional needs. FEMA continues to explore new methods and processes for documenting and populating reasonable accommodation and reasonable modification requests across the IHP. Lastly, in this rule, FEMA is revising the IHP *Application for Continued Temporary Housing Assistance, FEMA Form FF–104–FY–21–115,* to include a question that provides applicants with another opportunity to identify any disability-related household needs that might impact their application or recertification for temporary housing assistance.

As noted in the IAPPG 1.1, FEMA may provide Home Repair Assistance and Personal Property Assistance for disaster-damaged accessibility-related items. Nevertheless, in response to public requests for IHP policy that meets applicants' disaster-caused structural home modification needs, FEMA recently amended its policy to include *Assistance for Disaster-Caused Americans with Disabilities Act (ADA*) *Real Property Needs.* The September 2, 2021, *Amendment to FEMA Policy (FP) 104–009–03, Individual Assistance Program and Policy Guide (IAPPG), Version 1.1* memorandum currently allows FEMA to provide financial assistance to applicants who incur a disaster-caused disability and consequently require the installation or construction of accessibility-related real property components at their damaged dwelling to meet their needs. Home Repair Assistance for specific accessibility-related items is not limited by a financial maximum award. The following accessibility-related items are currently eligible under Home Repair Assistance when the applicant or a member of the household has a disaster-caused disability:

- Exterior ramp.
- Grab bars.
- Paved path of travel to the primary residential entrance (for accessible ingress or egress from the applicant's vehicle to their dwelling).

In response to public comments, FEMA is also making changes to the regulatory text at 44 CFR 206.117(b)(2) and adding a new 44 CFR 206.113(a)(9) as a part of this rule. The changes allow FEMA flexibility to provide financial assistance to applicants for the installation or construction of real property items that were not present in the home prior to the disaster. Specifically, these changes allow IHP to expand its existing policy, which provides for the installation of ADA related real property to applicants with disaster-caused needs, to include Home Repair Assistance for disaster survivors with pre-existing, pre-disaster needs for accessibility-related items, such as an exterior ramp, grab bars, etc., that make their home safe and functional when any level of disaster-caused real property damage occurs to the primary residence.

In new 44 CFR 206.113(a)(9), FEMA states that FEMA may provide assistance with respect to home repair for accessibility-related items, if an applicant meets the following conditions: (i) the applicant is either an individual with a disability as defined in 42 U.S.C. 5122 whose disability existed prior to the disaster [58] and whose primary residence was damaged by the disaster, or an individual with a disability as defined in 42 U.S.C. 5122 whose disability was caused by the disaster and whose primary residence was damaged by the disaster; (ii) the real property component is necessary to meet the accessibility-related need of the household; and (iii) the real property component is not covered by insurance or any other source.

Via information collection at 1660–0002, we are adding a documentation requirement to tie the need for the home repair accessibility-related items (which currently includes only ramp, grab bars, and/or paved pathway) to the pre-existing disability to meet the household's access and functional need. We are requiring that a medical, health care, or rehabilitation professional certify whether or not this is necessary; as, they have the expertise to make that determination or we will accept prior medical, health care, or rehabilitation professional documentation that supports the need for the accessibility-related items.

FEMA is making the below changes to Home Repair Assistance to respond to four RFI comments,[59] so that FEMA may make the dwelling safe/sanitary for pre-disaster disabled applicants. For example, this change will allow FEMA to reimburse pre-disaster disabled applicants for installation of accessibility items, such as grab bars and access ramps, if the primary residence sustained disaster damage regardless of whether or not the applicant had grab bars or access ramps pre-disaster.[60]

In 44 CFR 206.117(b)(2)(i), FEMA states that FEMA may provide financial assistance for the repair of an owner-occupied primary residence if: the eligibility criteria in 44 CFR 206.113 are met; FEMA determines the dwelling was damaged by the disaster; and the damage is not covered by insurance. This provision is similar to the current 44 CFR 206.117(b)(2)(i), except FEMA is removing the phrase ''real property components in'' before ''an owner-occupied primary residence;'' adding ''FEMA determines'' after ''met;'' removing ''to the component'' after ''damage'' and replacing ''component'' with ''dwelling,'' as the Stafford Act does not limit repairs to ''components'' and replacing ''owner's'' with ''owner-occupied'' for consistency as *owner-occupied* is the defined term in 44 CFR 206.111; removing the current 44 CFR 206.117(b)(2)(i)(B) that ''the component was functional immediately before the declared event'' and removing current 44 CFR 206.117(b)(2)(i)(E) that ''the repair of the component is necessary to ensure the safety or health of the occupant or to make the residence functional,'' and removing the clause ''and the damage was caused,'' since this rule will allow FEMA to pay for pre-existing conditions if the component itself was damaged by the disaster.

In 44 CFR 206.117(b)(2)(ii), FEMA states that FEMA may provide financial assistance for the repair of the disaster damaged dwelling to a safe and sanitary living or functioning condition. This

[57] FEMA currently provides letters in English and Spanish. FEMA recently updated our English and Spanish letters to include a tagline in six languages informing applicants how to contact the Helpline for translation help. The six languages are: English, Spanish, Russian, Portuguese, Vietnamese, and Korean.

[58] FEMA generally will accept statements from relevant medical providers, such as physical therapists, occupational therapists, registered nurses, physician assistants, etc.

[59] FEMA–2021–0011–0152, FEMA–2021–0011–0164, FEMA–2021–0011–0235, and FEMA–2021–0011–0261.

[60] If the FEMA assistance provided for these items is less than the actual cost to the applicant, the applicant may appeal for additional assistance. FEMA will accept itemized bills, receipts, or estimates to verify that there is a need for additional assistance.

clause is consistent with the current 44 CFR 206.117(b)(2)(ii), except FEMA is adding ''the disaster damaged dwelling to a safe and sanitary living or functioning condition including'' after ''of.'' These additions align with the changes that make it clear that only disaster damaged dwellings (regardless of their pre-disaster condition) may receive repair assistance, as FEMA may only pay to restore disaster damage to a safe and sanitary living or functioning condition. If the dwelling was not touched by the disaster, it will not be eligible for repair assistance; therefore, the applicant would not be able to apply for Home Repair Assistance for their pre-existing, pre-disaster needs for accessibility-related items, such as an exterior ramp, grab bars, etc., that would make their home safe and functional.

The September 2, 2021, *Amendment to FEMA Policy (FP) 104–009–03, Individual Assistance Program and Policy Guide (IAPPG), Version 1.1* memorandum also amended the Home Repair Assistance section in IAPPG 1.1 to include financial assistance to repair real property components impacted by disaster-caused mold growth.[61] The amendment's expressed intent was to support low income and other underserved disaster survivors who may not have the means to immediately address disaster damage, particularly when disasters are not declared immediately or inspections are delayed. However, all applicants with disaster-caused mold damage may be eligible for the assistance when they meet all other conditions of eligibility. These additional funds will be provided as part of the Home Repair Assistance award when applicable.

Appeals

Sixteen commenters provided responses about the IHP appeal process. Ten of the commenters expressed concern that the appeal process is burdensome on applicants and must be simpler in order for applicants of varying backgrounds and communities to successfully navigate the process.[62] According to 3 of these 10 commenters, filing a successful appeal for applicants in traditionally underserved populations often requires hard to find or costly access to legal services.[63] To streamline the appeal process and reduce the burden on disaster survivors, these commenters suggested FEMA expand methods for filing appeals, including by:

- Allowing applicants to file appeals online, by telephone, and in-person.[64]
- Providing a standard appeal form.[65]
- Reaching out directly to applicants by phone to personally assist them with the appeal process when they are denied assistance.[66]
- Providing appeal status updates to applicants through their online applicant portals.[67]

Two additional commenters described the appeal process as overly complicated to navigate because of challenges in other parts of the IHP delivery process. Specifically, these commenters asserted that IHP eligibility notification letters provided unclear explanations of the reason an applicant is determined ineligible for assistance. The commenters explained that when applicants are unable to identify and understand the cause of their denial for assistance, they lack critical information needed to pursue a successful appeal.[68] Three commenters also discussed obstacles disaster survivors face after the trauma of a major disaster and recommended that FEMA extend the appeal deadline beyond the current 60 days.[69] Two of these commenters explained that by providing applicants with a grace period for establishing ownership and addressing other issues that take time to obtain documentation, FEMA could improve access to their programs for applicants with low income and applicants of color who are disproportionately affected by heir-ownership (when a person inherited the land or residence but does not hold formal title to it) and other documentation issues.

Three other commenters argued the need for greater transparency in the appeal process.[70] One of the three recommended that FEMA publish appeal decisions online, while another suggested that if an applicant pursues an appeal and inspection documents exist, FEMA should provide those documents to the applicant regardless of the applicant's appeal approval or denial status. Four commenters maintained that the issue went beyond transparency and was instead a matter of fairness. They asserted that the existing appeal process is unfair because FEMA serves as both the *original* decision maker—determining applicant eligibility or award amount, while simultaneously serving as the *final* decision maker—determining if those same applicants have waged a successful appeal to overturn FEMA's original eligibility and/or award decisions.[71] Three of these commenters went on to reason that a right of legal action in the courts, to include an oral hearing and discovery, should be built into the FEMA appeal process.

FEMA does not have the legal authority to accept the commenters' suggestions to create a right to challenge FEMA's eligibility decisions in court as part of the appeal process, so that FEMA is not both the original decision maker and the final decision maker. The United States is immune from suit unless it consents to be sued.[72] The Stafford Act provides that FEMA shall not be liable for any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty. 42 U.S.C. 5148. The appeal process applies to FEMA's eligibility decisions under IHP. FEMA's eligibility decisions are discretionary determinations, which means that they are not reviewable by a court.[73] However, FEMA has protocols in place that guarantee appeals are not reviewed by the same case worker who made the original eligibility determination.

FEMA similarly does not have the legal authority to extend the 60-day appeal time frame set forth in 42 U.S.C. 5189a(a). Nevertheless, as a part of this rule, FEMA identified an opportunity to

[61] See page 9 of the Amendment to FP 104–009–03, Individual Assistance Program and Policy Guide, Version 1.1 memorandum cites to Chapter 3, Section IV.E. of the IAPPG 1.1, which is on pages 85–88 of IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

[62] FEMA–2021–0011–0151, FEMA–2021–0011–0162, FEMA–2021–0011–0209, FEMA–2021–0011–0235, FEMA–2021–0011–0237, FEMA–2021–0011–0245, FEMA–2021–0011–0260, FEMA–2021–0011–0261, FEMA–2021–0011–0273, and FEMA–2021–0011–0292.

[63] FEMA–2021–0011–0151, FEMA–2021–0011–0245, and FEMA–2021–0011–0260.

[64] FEMA–2021–0011–0149, FEMA–2021–0011–0261, and FEMA–2021–0011–0292.

[65] FEMA–2021–0011–0245.

[66] FEMA–2021–0011–0261.

[67] FEMA–2021–0011–0149.

[68] FEMA–2021–0011–0237 and FEMA–2021–0011–0275.

[69] FEMA–2021–0011–0149, FEMA–2021–0011–0208, and FEMA–2021–0011–0245.

[70] FEMA–2021–0011–0162, FEMA–2021–0011–0260, and FEMA–2021–0011–0295.

[71] FEMA–2021–0011–0235, FEMA–2021–0011–0275, FEMA–2021–0011–0295, and FEMA–2021–0011–0302.

[72] *See, e.g., United States* v. *Mitchell,* 463 U.S. 206, 212 (1983).

[73] *See City of San Bruno* v. *FEMA,* 181 F. Supp. 2d 1010, 1014–5 (N.D. Cal. 2001) (''Distributing limited funds is inherently a discretionary responsibility.'') Please note, while the eligibility decisions underlying appeals are discretionary and therefore immune from suit, the mandatory provisions in 42 U.S.C. 5189a related to appeals are not: FEMA is required to issue rules providing for the fair and impartial consideration of appeals. FEMA has discharged that responsibility by issuing regulations although the content of those regulations are also considered discretionary and immune from suit. (*Barbosa* v. *United States Dep't of Homeland Security,* 916 F.3d 1068, 1073 (D.C. Cir. 2019)) (''We have little doubt that the statutory requirement for regulations rely on the discretionary judgment of FEMA; the range of choice that FEMA can employ is quite wide'').

codify additional flexibilities for applicants in meeting this 60-day deadline for appeals sent by mail. As is currently done in practice, FEMA will continue to accept and process any appeal postmarked within 60 days of the date on the applicant's IHP decision letter, even if FEMA receives the appeal outside of the 60-day deadline.

FEMA can address comments to simplify the appeal process by removing the requirement to submit an appeal and by creating an optional appeal form. FEMA's existing regulations, 44 CFR 206.115(b), require that appeals must be in writing and explain the reason(s) for the appeal. However, a written explanation may not be necessary to substantiate an appeal claim. Instead, supporting documents, such as receipts, bills, repair estimates, contractor estimates, property titles, or deeds may better demonstrate the reason(s) for the appeal and provide justification for FEMA to reconsider the applicant's original eligibility determination. Nevertheless, to comply with the existing regulations, FEMA does not currently process appeals that do not contain the required written and signed letter of explanation, even if the applicant provides adequate documentation. To alleviate this bureaucratic hurdle, FEMA is removing the requirement that applicants must submit a signed appeal letter explaining the reason(s) for the appeal when they have provided sufficient justification through supporting documents. This change will streamline the appeal process and reduce additional paperwork and correspondence between the applicant and FEMA that may delay the applicant's recovery process.

To further assist applicants with navigating the appeal process, as suggested by a commenter, as part of this rulemaking, FEMA has developed an optional Appeal Request Form which applicants may use to assist them when submitting an appeal.[74] This form, which FEMA will accept as a written explanation, will be available online at *www.DisasterAssistance.gov.* These changes are intended to provide a more user-friendly, equitable, and efficient appeal process that better meets the needs of traditionally underserved populations.

With respect to the additional suggestions from commenters, FEMA notes that under the current process, applicants may access key information online, including appeal status, letters, and their personal appeal decision. Applicants with an online account can upload their appeal [75]or check the status of their appeal, by visiting *www.DisasterAssistance.gov* and selecting *Check Your Application Status* or by calling FEMA's Helpline at 800–621–3362 (711 or VRS available). Applicants who use a relay service, such as a Videophone, InnoCaption, or CapTel, are asked to provide the specific number assigned to that service. Individual applicants can reference their personal appeal decisions and letters online if they have created an online account and selected electronic correspondence from FEMA. FEMA considered publishing appeals information. Ultimately, FEMA declined to do so, due to a concern that releasing data of only appeal applicants would appear to require greater public exposure for appeal applicants than is required for initial applicants. Publication of appeal records could discourage applicants from appealing, or even appear to be a punitive measure for individuals who appeal.

Our system does not have the capability to display inspection reports nor is it captured in FEMA's National Emergency Management Information System (NEMIS) in a way that would readily be understood by the public. As part of FEMA's development of a new system,[76] FEMA plans to improve the amount of detail that can be provided to applicants related to their inspection results and eligibility.

In addition, under section 423 of the Stafford Act, 42 U.S.C. 5189a, and existing regulations governing FEMA IHP, 44 CFR 206.115(d)–(f), an applicant may ask for a copy of information in his or her file by writing to FEMA. To promote transparency, FEMA's regulations require the agency to give the applicant a written notice of the disposition of the appeal within 90 days of receiving the appeal. The appeal decision made by FEMA, or the State, Tribal, or Territorial (STT) government in instances where the STT government has opted to process ONA, is final. FEMA believes its current regulations are sufficient to ensure that disaster survivors can exercise their right to appeal assistance decisions. The existing regulations provide FEMA with the flexibility needed to meet survivor needs, while complying with privacy and paperwork reduction laws, intended to protect applicant information and minimize burdens, and avoiding the unnecessary expenditures and delays that would be a part of implementing the expanded appeal process requested by commenters, which included a litigation component to the IHP appeal process.

Finally, FEMA makes every effort to ensure that its correspondence is written using plain language and that eligibility notification letters provide adequate explanation of the applicant's eligibility determination, award decision, and next steps should the applicant want to appeal the eligibility determination or award amount.[77] For example, FEMA conducts periodic, comprehensive reviews of our applicant correspondence to make improvements based on disaster survivor feedback. As part of this process, FEMA hosts focus groups with disaster survivors to give them the opportunity to review proposed changes to our letters [78] and to provide us with feedback about how to make the letters more understandable and helpful. FEMA reviews the feedback received from the focus groups before finalizing changes to the letters. FEMA held focus groups in 2016 and 2022.[79]

Prior to peak hurricane season in 2022, FEMA updated its applicant letters based on focus group feedback, with the intent of simplifying the letters and making the appeal process clearer. As one example of a change made based on focus group input, FEMA further clarified the relationship between SBA and FEMA and how our processes interact, after focus group members

[74] FEMA is providing in this rule that appeals must include a written explanation or verifiable documentation for the appeal. This will give disaster survivors the option to complete the Appeal Request Form instead of drafting a written appeal letter, or submit verifiable documentation without the form or a letter. FEMA currently provides letters in English and Spanish. FEMA recently updated our English and Spanish letters to include a tagline in six languages informing applicants how to contact the Helpline for translation help. The six languages are: English, Spanish, Russian, Portuguese, Vietnamese, and Korean. FEMA knows which language to provide letters in based on the language that the Disaster Survivor selected on their Disaster Assistance Registration.

[75] Applicants that create an online FEMA account or use their *login.gov* account can upload documents including appeal letters.

[76] FEMA has been collecting suggestions from various workshops and other feedback efforts to ensure the new system, once built, meets all IHP and applicant needs.

[77] FEMA currently provides letters in English and Spanish. FEMA recently updated our English and Spanish letters to include a tagline in six languages informing applicants how to contact the Helpline for translation help. The six languages are: English, Spanish, Russian, Portuguese, Vietnamese, and Korean.

[78] In 2022, the focus groups reviewed the following letters: Cover Letter sent to all applicants; Continued Temporary Housing Assistance Letter; Denial letter; Approval letter; Request For Information letter; and Identity Theft/Bank Routing letter.

[79] At the 2016 focus group, 196 people agreed to participate but only 76 actually attended the feedback sessions. At the 2022 focus group, 102 people agreed to participate but only 18 actually attended the feedback sessions.

indicated that the SBA section of the letters were confusing.

Applicants who need assistance with understanding their eligibility notification letter or the appeal process can receive assistance by phone by calling the FEMA Helpline at 800–621–3362 (711 or VRS available). When available, applicants may also receive in-person assistance by visiting a local DRC, where FEMA and SBA customer representatives are available. FEMA will continue to explore options for simplifying the process for submitting appeals and strives to continue to identify ways to alleviate any disparate impacts to underserved groups in the IHP process.

Assistance by Default

Two commenters suggested FEMA implement proactive measures to provide a broad delivery of disaster assistance to residents in a declared area in order to equitably deliver assistance without regard to economic ability, housing situation, or specific losses attributed to the disaster.[80] One of the suggestions specified assistance should be delivered as an opt-out method, with a stronger focus on the housing needs of parolees and unhoused individuals.

FEMA has a duty under section 408(i) of the Stafford Act, 42 U.S.C. 5174(i), to verify each applicant is eligible for assistance. Additionally, section 696 of the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA), 6 U.S.C. 795, also requires FEMA to develop and maintain proper internal management controls to prevent and detect fraud, waste, and abuse. Accordingly, without a change to these underlying statutory provisions, FEMA cannot provide assistance without first verifying the applicant's specific housing situation or losses.

While FEMA understands the immediate need for assistance after catastrophic events, FEMA also has to balance its responsibility to ensure assistance is provided only to eligible individuals and for the purpose allowable by statute. Therefore, FEMA must verify disaster-caused loss or expenses. Additional assistance provided for in this rulemaking, such as Serious Needs Assistance and Displacement Assistance,[81] will make more funds immediately available and their eligibility criteria and uses are less specific than most existing forms of IHP assistance. It should also be noted that there are other State or local agencies, as well as volunteer organizations, that may be able to provide more targeted assistance to populations where needs and challenges extend beyond disaster caused impacts.

FEMA remains committed to ongoing community engagement and communication with our stakeholders to better understand the needs of traditionally underserved communities and to share information regarding disaster preparedness and recovery assistance. We conduct tribal engagement sessions on draft policies; and we have held engagement sessions with the public on letter updates. We also engage with other stakeholders, such as Congressional members and staff, State and local officials, and advocacy organizations to discuss their concerns.

Citizenship

A few commenters raised issues regarding immigration status-based restrictions on FEMA IA, arguing that FEMA should reform the IA Program to ensure that undocumented residents are eligible. Commenters noted that undocumented families are unable to access a range of benefits and therefore are more likely to suffer lasting harm.[82] One commenter stated that the FEMA registration process asks for information on all members of the household, not just the eligible member(s). Non-eligible parents who have survived disasters, even if they have U.S. citizen children, and other eligible survivors are not applying for help for fear they or others in their household may be turned in to immigration enforcement authorities.[83] This commenter also stated that FEMA should repeal its alleged policy of forwarding citizenship status to immigration enforcement authorities or any other Government agencies. Another commenter stated that one of the obstacles for disaster survivors seeking FEMA assistance is that based on the ''Welfare Reform Act,'' an immigrant must have been designated a legal immigrant for 5 years in order to receive any Federal financial assistance.[84] Another commenter suggested that FEMA should look into creating and promoting programs available for people who are not citizens but pay taxes through work permits or ITIN[85] numbers.[86] Lastly, one commenter stated that immigration and naturalization status is one demographic characteristic that is notably absent in the RFI.[87]

Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, sometimes referred to as the Welfare Reform Act, Pub. L. 104–193, provides that noncitizens who are not ''qualified aliens'' are not eligible for Federal public benefits, which include assistance provided under Section 408 of the Stafford Act, 42 U.S.C. 5174. FEMA cannot alter this requirement without a statutory change; however, FEMA considers the citizenship status of the entire household where someone is applying for assistance. This means that any adult household member who is a U.S. citizen or qualified alien in the household may apply for assistance, or any undocumented immigrants with children who are U.S. citizens may apply on behalf of their child. Further, regardless of citizenship status, disaster survivors may be eligible for the following FEMA programs that provide services instead of financial assistance to individuals:

- Mass Care/Emergency Assistance (Section 403 of the Stafford Act, 42 U.S.C. 5170b) which addresses sheltering needs immediately following a disaster;
- Crisis Counseling Assistance and Training Program (Section 416 of the Stafford Act, 42 U.S.C. 5183) which is a Federal-funded supplemental program that enables State, local, Territorial, or Tribal government agencies to provide crisis counseling services or contract with local mental health service providers to provide services;
- Disaster Case Management (DCM) (Section 426 of the Stafford Act, 42 U.S.C. 5189d) which is a Federal-funded supplemental program that provides financial assistance to State, local, Territorial, or Tribal government agencies, or qualified private organizations, to enable non-Federal entities to provide DCM services; and
- Disaster Legal Services (Section 415 of the Stafford Act, 42 U.S.C. 5182) which via an agreement with the American Bar Association provides free legal help for survivors.

In 2017, FEMA updated the FEMA registration language by removing

[80] FEMA–2021–0011–0259 and FEMA–2021–0011–0274.

[81] Applicants experiencing homelessness pre-disaster who can also verify occupancy at an impacted location may also be considered for Initial Rental Assistance only; LER; all types of ONA (this includes Serious Needs Assistance, Displacement Assistance, and Critical Needs Assistance (prior to the IFR).)

[82] FEMA–2021–0011–0293 and FEMA–2021–0011–0269.

[83] FEMA–2021–0011–0245.

[84] FEMA–2021–0011–0255.

[85] An ITIN, or Individual Taxpayer Identification Number, is a tax processing number only available for certain nonresident and resident aliens, their spouses, and dependents who cannot get a Social Security Number (SSN). It is a 9-digit number, beginning with the number ''9,'' formatted like an SSN (NNN–NN–NNNN).

[86] FEMA–2021–0011–0275.

[87] FEMA–2021–0011–0163.

references to the Bureau of Immigration and Customs Enforcement [88] and clarifying the reasons FEMA would share information. The current version informs applicants that, consistent with the Privacy Act, 5 U.S.C. 552a, FEMA may share individuals' information with Federal, State, Tribal, and local agencies and voluntary organizations to enable individuals to receive additional disaster assistance or to allow FEMA to administer assistance.[89]

The topic of immigration is notably absent in the RFI because citizenship requirements for Federal assistance are established by statute and cannot be resolved via rulemaking. However, FEMA has no policy of forwarding individuals' information particularly pertaining to their citizenship status to immigration enforcement authorities. Accordingly, FEMA posts the following language via a flyer in all DRC locations. ''This location is a protected area designated to provide emergency response and relief. FEMA will not proactively share your information with immigration or law enforcement agencies. U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) will not conduct enforcement operations at or near this location, except in the most extraordinary of circumstances.''

Codes and Standards

One comment was received suggesting that FEMA should require IHP applicants to adhere to minimum construction standards for any applicable repair to their disaster-damaged home, regardless of whether the local community has adopted a building code.[90] While FEMA recognizes the importance of building codes and encourages all communities to adopt and enforce modern building codes,[91] we do not believe it is appropriate to establish a nationwide minimum construction standard for IHP at this time. FEMA provides funds to IHP recipients to address disaster repair needs, which may include costs to meet applicable codes, up to the Housing Assistance maximum award. Recipients should rebuild or repair their damaged homes in compliance with applicable State and local codes, and are subject to State and local enforcement of those codes. FEMA does not have the capacity to monitor and enforce a nationwide minimum construction standard for IHP. Moreover, FEMA does not have the authority to fund costs of compliance of any such code beyond the maximum award amount, which would leave some recipients in a situation where FEMA would require repair work but would not be able to provide sufficient funding to cover it.

Cost Share

Two commenters raised issues regarding the cost share requirement, arguing that FEMA should reduce or remove the requirement altogether.[92] The commenters noted that the cost share requirement can preclude many communities from accessing resources because they do not have the ability to meet the cost share, specifically, economically disadvantaged rural communities and Tribal Nations.

Section 408(g) of the Stafford Act, 42 U.S.C. 5174(g), governs the IHP cost share. Specifically, it states that the Federal share of Housing Assistance under the IHP will be 100 percent; whereas, the Federal share for Other Needs Assistance will be 75 percent and the non-Federal share will be paid from funds made available by the relevant STT government.[93] The statute at 48 U.S.C. 1469a(d) allows FEMA to waive or adjust the cost share for disaster grants in insular areas such as the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. Outside of this one specific flexibility, FEMA does not have the ability to waive or adjust the cost share for IHP assistance through regulatory change, as it would require a legislative change.

Data Sharing/Collection

Two commenters expressed their concerns with how applicant data is shared from FEMA with local partners. One of them commented that the way in which FEMA shares data with local partners seems to be inconsistent from incident to incident.[94] Additionally, they asked that FEMA utilize Internal Revenue Service (IRS) income data to expedite the verification process.[95] The other commenter mentioned how FEMA's registration data needs to be accurate and quickly made available to local partners, and that FEMA should create procedures to safeguard applicants' information.[96]

FEMA recognizes that data sharing might make it easier for survivors to access assistance from other entities, and FEMA is always looking for ways to simplify IHP and speed the delivery of assistance. However, collecting, maintaining, and sharing data on a large scale presents challenges with respect to data security, and updating the rules on data sharing with State and local partners requires carefully balancing those concerns against the benefits of simplifying the program. FEMA continues to work alongside its State, local, Tribal, and Territorial partners to ensure that disaster recovery resources and services are not delayed or hindered by data collection and sharing concerns. Applicants can also access up to date information on their individual applications by setting up a Disaster Assistance Center electronic account with FEMA following a disaster.

Lastly, the IRS has indicated they could not share data with FEMA without statutory authorization.[97] As most forms of FEMA assistance are not income dependent, however, using IRS income data would not significantly improve how quickly FEMA is able to get initial assistance to applicants. Applicants are asked to self-report their income at Registration Intake to determine if the applicant meets criteria established by the SBA to indicate the capability to repay a loan. Those applicants determined potentially capable of repaying a loan are referred to the SBA and must complete an application with the SBA before being further considered by FEMA for SBA-dependent ONA. Additionally, as part of this rule, FEMA is removing the requirement that applicants must apply and be denied for an SBA disaster loan before being considered for SBA-dependent ONA, further minimizing any potential benefits of information sharing by the IRS.

Demographics

One commentor stated that Federal funds should not be a roadmap but rather a single point of engagement and support, especially to underserved communities or other communities who may fall below the poverty line or

[88] The Bureau of Immigration and Customs Enforcement is now referred to as the U.S. Immigration & Customs Enforcement.

[89] See ICR Reference No. 202201–1660–005, FF–104–FY–21–122 (formerly 009–0–1) View Information Collection Request (ICR) Package (*reginfo.gov*).

[90] FEMA–2021–0011–0307.

[91] *https://www.fema.gov/sites/default/files/documents/fema_bcs-brochure_03-01-21_0.pdf.*

[92] FEMA–2021–0011–0265 and FEMA–2021–0011–0289.

[93] The Stafford Act definition of State in 42 U.S.C. 5122(4) incorporates the Territories and DC. The ''References'' provision in 42 U.S.C. 5123 incorporates Tribes into either the definition of State or local government, depending on the role of the Tribe.

[94] FEMA–2021–0011–0187.

[95] FEMA–2021–0011–0187.

[96] FEMA–2021–0011–0277.

[97] See 26 U.S.C. 6103; IRS, Disclosure Laws (Oct. 5, 2022), *https://www.irs.gov/government-entities/federal-state-local-governments/disclosure-laws.* FEMA had multiple discussions with the IRS on this subject, and representatives from the IRS stated clearly that the agency believed that sharing this type of data with FEMA would require a statutory authorization.

become homeless, and should ensure quality of life before the disaster for these communities.[98] A few commenters suggested that FEMA should collect demographic data especially of those residing in vulnerable and underserved communities to identify the communities with the most need and enhance equitable recovery.[99] One of those commenters also suggested that FEMA should reconsider the constraints of the Paperwork Reduction Act on how FEMA collects and shares voluntary demographical data.[100] A few commenters raised the issue of the type of demographic data that FEMA should collect for identifying the communities which benefit most from FEMA resources to include voluntary household data (*i.e.,* gender and race) and how they intersect (*e.g.,* Black woman, Latino man); immigration and nationalization status; ethnicity; race; income; degree of rurality; and data that represents the underserved and others who may fall below the poverty line or become homeless.[101]

With respect to acting as a single point of engagement for underserved communities' broader quality of life needs, FEMA is committed to providing disaster assistance in a fair and equitable manner. This rule's changes to how FEMA assesses habitability, discussed in more depth below, will put applicants in a better position to recover from disasters while staying within the bounds of FEMA statutory authority under the Stafford Act.

With respect to demographic data, in an effort to further understand the distribution of awarded IHP assistance, FEMA obtained Office of Management and Budget's (OMB) approval to gather demographic information from disaster survivors who choose to provide it.[102] This data will help FEMA assess [103] whether agency policies and actions create or exacerbate barriers to full and equal participation in our programs and better understand program outcomes for applicants.

Disaster Housing Assistance Program

A few commenters mentioned the expired Disaster Housing Assistance Program (DHAP), which initially was created as a FEMA pilot program administered by the U.S. Department of Housing and Urban Development (HUD) to assist applicants of Hurricanes Katrina and Rita,[104] later for Hurricanes Ike and Gustav, and a small program for Hurricane Sandy. One commenter questioned why the previous administration did not utilize this program for any recent disasters.[105] Two other commenters requested the pilot program be reinstated.[106]

Rather than reinstate DHAP,[107] FEMA has instead developed and implemented another form of Direct Temporary Housing Assistance called Direct Lease. Direct Lease provides FEMA with the ability to lease properties not generally available to the public directly from the landlord to provide temporary housing to eligible survivors.[108] Under Direct Lease, eligible survivors pay no cost for rent (not including utilities) for up to 18 months. FEMA matches survivors with available housing that meets their needs and FEMA is able to place applicants into Direct Lease within 4 to 6 weeks following a disaster declaration.[109]

Direct Housing

Several commenters mentioned Direct Housing Assistance. Four commenters recommended FEMA should change regulations and policy to allow FEMA to provide permanent housing solutions such as repairing and/or rebuilding the applicant's damaged/destroyed dwelling.[110] One commenter desired more housing options outside of Transportable Temporary Housing Units under Direct Housing Assistance,[111] whereas, another commenter wanted FEMA to provide more help to applicants on their permanent housing plan.[112] Lastly, one commenter wanted to remind FEMA to ensure information provided to applicants meet relevant fair housing and civil rights laws and notes that FEMA should enforce those laws with entities with whom FEMA partners.[113]

FEMA's existing regulations at 44 CFR 206.117(b) and IAPPG 1.1 currently allow for the following forms of Direct Housing Assistance: Transportable Temporary Housing Units, MLR, Direct Lease, and PHC. Per 42 U.S.C. 5174(c)(4), FEMA may only provide PHC assistance—in the form of direct repairs or new construction—to individuals and households to construct permanent or semi-permanent housing in insular areas outside the continental United States. Per 42 U.S.C. 5174(c)(4)(A)–(B), FEMA may also consider providing such assistance in other locations where no alternative housing resources are available and other types of Temporary Housing Assistance are unavailable, infeasible, or not cost-effective.[114] Such circumstances are extremely rare: FEMA has only authorized PHC in the continental United States twice.[115]

FEMA supports all direct housing occupants—owners and renters—in achieving their Permanent Housing Plans [116] through multiple channels, including working with Voluntary Agency Liaisons [117] and DCM specialists

[98] FEMA–2021–0011–0159.

[99] FEMA–2021–0011–0163, FEMA–2021–0011–0224, FEMA–2021–0011–0261, FEMA–2021–0011–0264, FEMA–2021–0011–0275, and FEMA–2021–0011–0277.

[100] FEMA–2021–0011–0163.

[101] FEMA–2021–0011–0163, FEMA–2021–0011–0259, FEMA–2021–0011–0261, and FEMA–2021–0011–0275.

[102] Information Collection 1660–0154, Generic Clearance for Civil Rights and Equity. In the IHP, FEMA already collects some demographics for programmatic reasons (date of birth/age, income, and disability via OMB Control Number: 1660–0002, Disaster Assistance Registration). Under 1660–0154, new questions pertaining to race, Tribal enrollment, ethnicity, education, gender, and marital status are intended to be used in order to conduct robust statistical analysis of the outcome of IHP for various vulnerable populations. The data will be used to understand intersectionality of demographics and identify any issues with program implementation that may be affecting a specific group of individuals.

[103] The supporting statement associated with FEMA's demographics data collection, 1660–0154, indicates that FEMA will do analysis of the demographic questions to determine if it is necessary to continue to collect the data based on our findings. We plan to complete this analysis after 2 years of data collection, in the fall of 2024, to inform whether all six questions are still needed.

[104] See *https://www.huduser.gov/portal/publications/destech/DHAP.html* for a HUD evaluation of DHAP that served Katrina and Rita.

[105] FEMA–2021–0011–0149.

[106] FEMA–2021–0011–0162 and FEMA–2021–0011–0235.

[107] Building off lessons learned from DHAP, HUD, and FEMA had exploratory conversations regarding development of a new pilot called Disaster Assistance Supportive Housing (DASH). However, DASH is not currently being pursued.

[108] The property must be an existing residential property, not typically available to the general public (*i.e.,* corporate apartments, vacation rentals, and second homes) for use as temporary housing.

[109] In situations where pre-disaster HUD occupants are placed into a FEMA-provided direct housing unit, HUD will engage with the pre-disaster HUD assisted families to assist them in finding permanent housing.

[110] FEMA 2021–0011–0157, FEMA 2021–0011–0237, FEMA 2021–0011–0269, and FEMA 2021–0011–0224.

[111] FEMA 2021–0011–0261.

[112] FEMA 2021–0011–0146.

[113] FEMA 2021–0011–0235.

[114] See 44 CFR 206.117(b)(4)(i)(F).

[115] The factors that most commonly result in a need for PHC outside the continental United States are a lack of temporary housing resources and an inability to bring temporary housing into an affected area due to high transportation costs.

[116] Currently, permanent housing plan is defined at 44 CFR 206.111 to mean a realistic plan that, within a reasonable timeframe, puts the disaster victim back into permanent housing that is similar to the victim's pre-disaster housing situation. A reasonable timeframe includes sufficient time for securing funds, locating a permanent dwelling, and moving into the dwelling.

[117] Voluntary Agency Liaisons establish and maintain relationships among Federal and SLTT governments, as well as voluntary, faith-based and community organizations active in preparedness, response, and recovery; coordinate with Voluntary Organizations Active in Disaster at the national,

to identify and provide additional individualized services and referrals for occupants, coordinating with the respective STT government to jointly develop milestones for timely completion of occupant transitions to permanent housing, and maintaining engagement with the STT government and long-term recovery groups to identify State or local housing programs that can continue to support survivors after FEMA's direct housing mission closes. Furthermore, FEMA complies with and requires all housing entities with whom the Agency contractually partners to comply with Federal housing and civil rights laws. Lastly, it is important to note that FEMA is undertaking an effort to improve and streamline Direct Housing Assistance, which may include further regulatory reforms.[118]

Group Flood Insurance Policy

One commenter stated that the IA flood insurance requirements, which attaches to property rather than people, can be a burdensome expense for those on limited and fixed incomes.[119] The commenter also raised concern about FEMA's policy of determining an applicant ineligible for disaster assistance when they have failed to maintain flood insurance requirements established when the applicant received the initial FEMA financial assistance that triggered the flood insurance requirement. The commenter suggested FEMA consider extending group flood insurance coverage to poor communities beyond 36 months.

FEMA does not have the authority to remove the flood insurance requirement absent a legislative change to the National Flood Insurance Act of 1968 (NFIA). Under the Flood Disaster Protection Act of 1973, FEMA may not approve any financial assistance for acquisition or construction purposes for use in any Special Flood Hazard Area (SFHA) where the sale of flood insurance has been made available under the NFIA, 42 U.S.C. 4001 *et seq.,* unless the building or mobile home and any personal property to which such financial assistance relates is covered by flood insurance in an amount at least equal to its development or project cost. See 42 U.S.C. 4012a(a). As the commenter notes, this requirement to maintain flood insurance applies to the property, regardless of whether ownership is transferred.

While much of this comment touches on the National Flood Insurance Program (NFIP) and is outside the scope of this IA rulemaking,[120] FEMA understands that flood insurance policies may be cost prohibitive for some disaster survivors as they are trying to recover from a major disaster. A GFIP is a form of assistance that can help applicants who have trouble affording an initial flood insurance policy. FEMA establishes a GFIP for each disaster declaration that results from flooding and is authorized for IA. FEMA's existing regulations at 44 CFR 206.119(d) provide that individuals identified by FEMA as eligible for ONA as a result of flood damage caused by a Presidentially-declared major disaster and who reside in a SFHA may be included in a GFIP established under the NFIP regulations at 44 CFR 61.17.

Per IAPPG 1.1, FEMA directly purchases GFIP certificates on behalf of applicants who are required to purchase and maintain flood insurance but who may not otherwise be able to purchase a policy. This assistance is provided as a part of the effort to reduce future expenses from floods. As required by existing regulations at 44 CFR 206.119(a), applicants must apply for and be denied an SBA loan before receiving a GFIP certificate under ONA. This rule will remove this SBA requirement, which increases the number of applicants in SFHAs that are eligible to receive a 3-year policy from FEMA following a flood disaster.[121]

Habitability

A few commenters raised issues regarding the definition of ''uninhabitable,'' recommending that FEMA should revise the definition to ensure it meets the needs of all disaster survivors and underserved communities.[122] One commenter stated that FEMA defines ''uninhabitable'' as a dwelling that is not safe, sanitary, or fit to occupy, but that FEMA has no published standard that establishes when a home is ''safe, sanitary, and functional.'' This commenter stated FEMA must clearly define what constitutes a ''safe, sanitary, and functional home.'' [123] Another commenter stated that if a residence is deemed ''safe to occupy'' the applicant will be denied IHP assistance, as it is presumed habitable, and that ''One Size Fits All'' Habitability Standard is built on the faulty assumption that what is safe to occupy for one is safe to occupy for all.[124] This commenter also noted that following Hurricane Harvey, FEMA did not consider the presence of mold as a condition which would prevent safe occupation; therefore, many were denied assistance. Another commenter argued that part of the reason for fewer awards to low-income disaster survivors is likely based on the implicit bias and inadequate training of its inspectors but also that part of the reason lies in FEMA's standards for determining when a disaster survivor's home is ''safe to occupy.'' [125] This commenter also noted that despite applicants living in homes with blue-tarped roofs, buckled floors, nonexistent foundations, destroyed septic systems, and gaping holes, they were denied assistance as their dwelling

State, Territorial, Tribal, and local levels; assist with translating and navigating Federal programs for their stakeholders; provide technical guidance and support with donations, unaffiliated and spontaneous volunteer management; and collaborate with and support non-government organizations that deliver an array of disaster relief services to affected jurisdictions.

[118] Direct Housing field operations coordinate with DCM and Voluntary Agency Liaisons by hosting regular roundtable discussions to discuss unmet needs and identify specific solutions for occupants to help them achieve their permanent housing plans.

[119] FEMA–2021–0011–0275.

[120] FEMA is working on many rulemakings to help the public regarding the NFIP. See the following rules on FEMA's Unified Agenda (UA): 1) 1660–AB06, the *National Flood Insurance Program: Standard Flood Insurance Policy (SFIP), Homeowner Flood Form.* This rule would revise the SFIP by adding a new Homeowner Flood Form and five accompanying endorsements. The new Homeowner Flood Form would replace the Dwelling Form as a source of coverage for homeowners of one-to-four family residences. Together, the new Form and endorsements would more closely align with property and casualty homeowners' insurance and provide increased options and coverage in a more user-friendly and comprehensible format. 2) 1660–AB11, *NFIP's Floodplain Management Standards for Land Management & Use, & an Assessment of the Program's Impact on Threatened and Endangered Species & Their Habitats.* FEMA issued a Request for Information to receive the public's input on revisions to the NFIP's floodplain management standards for land management and use regulations. FEMA's authority under the NFIA requires the agency to, from time to time, develop comprehensive criteria designed to encourage the adoption of adequate State and local measures. The agency is reviewing potential actions to better align the NFIP minimum floodplain management standards with our current understanding of flood risk, flood insurance premium rates, and risk reduction approaches to make communities safer, stronger, and more resilient to increased flooding. FEMA is considering revisions to the minimum standards to better protect people and property in a nuanced manner that balances community needs with the national scope of the NFIP while also incorporating opportunities for improving resilience in communities that have been historically underserved. The agency is also reviewing ways to further promote enhanced resilience efforts through the Community Rating System and to strengthen NFIP compliance with Section 7 of the Endangered Species Act.

[121] An applicant who accepts an SBA loan with a flood insurance requirement will not be considered for a FEMA-purchased GFIP certificate in the same disaster as an applicant cannot hold two flood insurance policies on one property.

[122] FEMA–2021–0011–0260, FEMA–2021–0011–0152, and FEMA–2021–0011–0286.

[123] FEMA–2021–0011–0295.

[124] FEMA–2021–0011–0152.

[125] FEMA–2021–0011–0286.

was determined ''safe to occupy.'' Lastly, another commenter stated that FEMA lacks ascertainable standards for equitable and impartial distribution of Home Repair Assistance, which results in arbitrary, subjective decisions about who gets Home Repair Assistance and how much assistance is provided in each case.[126]

Section 408 of the Stafford Act, 42 U.S.C. 5174, authorizes FEMA to provide Housing Assistance to applicants who, as a direct result of a major disaster, are displaced from their pre-disaster primary residences or are left with pre-disaster primary residences that are ''uninhabitable'' or, with respect to individuals with disabilities, are ''uninhabitable or inaccessible.'' FEMA's regulations at 44 CFR 206.111 defines ''uninhabitable'' as a dwelling that is not ''safe, sanitary or fit to occupy.'' FEMA's regulations at 44 CFR 206.111 further defines ''safe'' and ''sanitary,'' but does not define ''fit to occupy.'' ''Safe'' means secure from disaster-related hazards or threats to occupants; ''sanitary'' means free of disaster-related health hazards.

FEMA recognizes that current regulations limit assistance to applicants with residences that incurred disaster-caused damage falling short of immediate safety and sanitation concerns and prevents FEMA from addressing or assessing the general livability issues when determining Housing Assistance eligibility, and is making changes that are expected to address these concerns. FEMA is revising the term ''uninhabitable'' to mean the dwelling is not safe or sanitary. FEMA is revising the term ''safe'' to mean secure from hazards or threats to occupants, and FEMA is revising the term ''sanitary'' to mean free of health hazards. FEMA is also removing the requirement for disaster-damaged real property components to be functional immediately before the disaster in order to provide assistance for pre-existing damage exacerbated by the disaster. This change will remove a discretionary element for inspectors that is not required by the Stafford Act.[127] As a result, applicants with minimal damage, who may be without the means to pay for minimal repairs, or who are unable to complete the work themselves, will be eligible for Home Repair Assistance.

Hazard Mitigation Under IHP

Eleven commenters stated that FEMA should allow recovery funds to be used toward making resilient upgrades that offer greater protection against future disasters, with one commenter specifically noting that this would be particularly helpful in flood prone areas.[128] Another commenter noted the recent changes made to IHP assistance provide funds toward hazard mitigation measures; however, they stated that these funds are specifically for wind and flood events. This commentor believed that these funds should also be extended to wildfire and earthquake events.[129]

FEMA recognizes that helping disaster survivors address hazard mitigation measures while repairing their homes from disaster damage will help make their homes more resilient. Therefore, using our authority under Section 408(c)(2)(A)(ii) of the Stafford Act, 42 U.S.C. 5174(c)(2)(A)(ii), FEMA began including additional assistance for mitigation in Home Repair Assistance awards for disasters declared on or after May 26, 2021.[130]

Prior to this IFR, hazard mitigation under IHP is awarded as part of Home Repair Assistance for specific real property components that existed and were functional prior to the disaster—roof, water heater, furnace, and main electrical panel.[131] Hazard mitigation measures are intended to minimize future damage to owner-occupied residences and are subject to the IHP maximum amount of Home Repair Assistance. FEMA plans to expand hazard mitigation under IHP in the future to include funds for additional mitigation measures, some targeted toward additional disaster causes.

This IFR will allow FEMA to include mitigation for components that were not functional prior to the disaster when the damage to the component is worsened by the disaster.

Home Repair Assistance

Seven commenters raised concern regarding FEMA's delivery of Home Repair Assistance,[132] specifically focusing on how FEMA addresses pre-existing damage.

Per Section 408 of the Stafford Act, 42 U.S.C. 5174, FEMA may provide financial assistance for the repair of owner-occupied private residences, utilities, and residential infrastructure (such as a private access routes) damaged by a major disaster to a safe and sanitary living or functioning condition; and eligible hazard mitigation measures that reduce the likelihood of future damage to such residences, utilities, or infrastructure.

As part of this rule, FEMA is removing the requirement for real property components to be functional immediately before the disaster to provide assistance for pre-existing damage that has been further damaged by the disaster. When a component of the home with pre-existing damage is further damaged by the disaster, FEMA may provide assistance to fully repair or replace the item (as appropriate) rather than denying assistance solely because not all damage was caused by the disaster.

One comment suggested FEMA focus its efforts on providing permanent repairs to disaster-damaged homes using a sliding scale benefit.[133] FEMA has limited statutory authority to provide direct repairs via PHC—*i.e.,* per Section 408(c)(4) of the Stafford Act, 42 U.S.C. 5174(c)(4), FEMA may only provide financial assistance or direct assistance—in the form of direct repairs or new construction—to individuals and households to construct permanent or semi-permanent housing in insular areas outside the continental United States. or other areas where no alternative housing resources are available and other types of Temporary Housing Assistance are unavailable, infeasible, or not cost-effective. Because FEMA is authorized under statute to provide such assistance only in these limited circumstances, FEMA has only implemented this type of direct assistance twice before in the continental United States.

[126] FEMA–2021–0011–0310.

[127] In coordination with the publication of this rule, FEMA will ensure its training and instructional materials are updated to ensure all relevant FEMA staff are apprised of and are able to implement the changes.

[128] FEMA–2021–0011–0151, Attachment 1; FEMA–2021–0011–0206; FEMA–2021–0011–0209; FEMA–2021–0011–0221; FEMA–2021–0011–0224; FEMA–2021–0011–0237; FEMA–2021–0011–0270; FEMA–2021–0011–0271; FEMA–2021–0011–0278; FEMA–2021–0011–0285; and FEMA–2021–0011–0303.

[129] FEMA–2021–0011–0261. At the time of this comment, FEMA was only providing hazard mitigation assistance for items in wind and flood events. However, in August of 2022, FEMA added two fire-specific hazard mitigation items, *i.e.,* covering for attic vents, crawlspace vents, and vents in enclosures below decks and non-combustible gutter and leaf guards. FEMA continues to explore hazard mitigation under the IHP to include funds for additional mitigation measures, some targeted toward additional disaster causes.

[130] See pages 86–88 of IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

[131] Prior to this IFR, in order to receive IHP assistance toward hazard mitigation efforts, the component needs to have been functional prior to the disaster.

[132] FEMA–2021–0011–0033, FEMA–2021–0011–0149, FEMA–2021–0011–0194, FEMA–2021–0011–0199, FEMA–2021–0011–0245, FEMA–2021–0011–0277, and FEMA–2021–0011–0310.

[133] FEMA–2021–0011–0269.

Homelessness

Four commenters voiced concern over the lack of FEMA guidance to State, local, and Tribal governments on how to handle people experiencing homelessness during a disaster, the lack of resources available for people experiencing homelessness during or after a disaster, and the need for more programs dedicated to those experiencing homelessness.[134]

Per Section 408(a)(1) of the Stafford Act, 42 U.S.C. 5174(a)(1), FEMA's IHP assistance is intended to assist with disaster-caused losses; therefore, issues related to pre-disaster homelessness are outside the scope of the program. FEMA does not provide Housing Assistance (Rental Assistance, Direct Assistance, Home Repair Assistance, or Home Replacement Assistance) to applicants experiencing pre-disaster homelessness if their need for housing or shelter was not caused by the disaster. However, applicants experiencing pre-disaster homelessness may be eligible for certain types of ONA (Transportation Assistance, Medical and Dental Assistance, Funeral Assistance, and Child Care Assistance). Further, applicants whose pre-disaster residence was a tent or other form of nontraditional housing could be considered for limited housing assistance (2-month initial Rental Assistance and Lodging Expenses Reimbursement) if a public official or homelessness advocate verifies a disaster survivor's occupancy and if that individual meets all other eligibility requirements.

While FEMA may be limited in the types of assistance it can provide to pre-disaster homeless individuals, there are other Federal, State, or local government resources that are more readily available for this population, *e.g.,* HUD's Emergency Solutions Grants Program or HUD's Rapid Unsheltered Survivor Housing Program.

Applicants experiencing homelessness as a result of the disaster—for example, those whose pre-disaster residences were destroyed due to a disaster—may be considered for various types of financial Housing Assistance to include Lodging Expense Reimbursement, Rental Assistance, Home Repair Assistance, and Replacement Assistance, to meet their disaster housing needs. Additionally, if a direct housing mission is approved for the disaster, they could be eligible for a direct housing unit depending on the level of damage incurred to their pre-disaster residence and on whether they have not been able to use any FEMA-provided Rental Assistance.

IHP File

A few commenters raised issues regarding FEMA's process for applicants to request a copy of their IHP file, stating that it is unnecessarily complex.[135] One commenter argued that it is excessive and unnecessarily burdensome to require applicants to obtain notary signatures or provide the penalty of perjury statement in order to access their IHP file. This commenter reasoned that IHP file information should be accessible through one online portal.[136] Another commenter argued that when applicants request a copy of their file, FEMA does not provide access to all specific information used to make FEMA's decision such as pictures, home and property damage descriptions, and eligibility decisions, including include how FEMA calculates the awards and inspection line-item pricing. This commentor also noted that to access this type of information, applicants must file a Freedom of Information Act request.[137] Lastly, one commenter stated that FEMA should develop a streamlined process including a central point of contact for State-led agencies and other disaster relief organizations to obtain applicant information required to provide further recovery assistance years following the disaster declaration.[138]

There are multiple statutes which govern what information FEMA may collect and how that information may be shared. The Stafford Act allows FEMA to collect personal information to determine eligibility and administer FEMA disaster assistance as a result of an emergency or a Presidentially declared disaster. See 42 U.S.C. 5121–5207.

As outlined on page 67 of IAPPG 1.1, applicants may submit a written, signed request for a copy of FEMA's records related to their registration for IHP assistance.[139] The request must specifically state what information the applicant would like to receive (*e.g.,* entire file copy, copy of all correspondence from FEMA, etc.)[140] and who is to receive the requested information (*e.g.,* self, attorney, friend, etc.). For identity verification purposes, the request must include, among other requirements, the applicant's signature with either a notary stamp or seal or the statement: ''I hereby declare under penalty of perjury that the foregoing is true and correct.'' Applicants have the ability to create an online account, via *www.DisasterAssistance.gov,* where they may access a high-level overview of their application, including eligibility determinations and letters provided by FEMA, upload documentation, and change some information. Current system limitations prevent FEMA from including information such as pictures, home and property damage descriptions, and inspection line-item pricing. However, FEMA is developing a new system with increased capabilities.[141] Once such increased capabilities are developed, nothing in this rule will prevent FEMA from implementing them. Information on how FEMA calculates awards and determines eligibility are available to the public via the IAPPG.

FEMA continues to work alongside its State, local, Tribal and Territorial partners to ensure that disaster recovery resources and services are not delayed or hindered by data collection and sharing concerns. Following a disaster, FEMA establishes a Joint Field Office (JFO), which is the appropriate central point to work with the State and disaster-relief organizations for the disaster. Once the JFO closes, those duties would devolve to the FEMA Region, unless a long-term field office is set up to handle disaster-related concerns. FEMA has processes in place to assist States, Tribes, and Territories with information sharing. These entities work with the FEMA staff assigned to coordinate with them for a specific disaster. This is the standard process that FEMA utilizes when responding to disaster-specific requests of all types from States, Tribes, and Territories.

Insurance

One commenter stated that the Stafford Act needed to be amended so that Federal assistance would not be considered a duplication of benefits

[134] FEMA–2021–0011–0235, FEMA–2021–0011–0277, FEMA–2021–0011–0295, and FEMA–2021–0011–0310.

[135] FEMA–2021–0011–0149 and FEMA–2021–0011–0277.

[136] FEMA–2021–0011–0149.

[137] FEMA–2021–0011–0295.

[138] FEMA–2021–0011–0275.

[139] Applicants may alternatively choose to complete, sign, and return the Authorization for the Release of Information Under the Privacy Act form (OMB No. 1660–0061) to request a copy of their file and authorize the release of information.

[140] Note that line-item pricing is not part of an applicant's IHP file and therefore is not included in requests for copies of IHP files. While NEMIS can provide a summary of the items viewed or noted during inspection, it does not include the line-item pricing.

[141] FEMA is in the very early stages of the Systems Engineering Lifecycle and Acquisition process. The Agency is working to complete all requisite documentation needed for gate reviews, and have requested funding via the Program Decision Option process to support completely modernizing the functionality currently provided by the legacy on-premises NEMIS–IA system. This will be a multi-year effort.

with received insurance proceeds.[142] Statutory changes are outside the scope of this rulemaking.

Loss Verification

Twenty-three comments were received regarding FEMA's loss verification methods,[143] referencing FEMA's inspection process and describing it as slow, subject to human error, costly, and disproportionally impacting historically disadvantaged populations. While three commenters stated FEMA should utilize more geospatial technology or develop remote technology capabilities, one commenter [144] noted concern over the remote inspector process established by FEMA during COVID–19, stating that it disadvantaged disaster survivors by creating additional documentation burdens, which particularly impacted those who were least able to access technology or local assistance. Another commenter noted their concern that the loss verification process prioritized property values rather than examining the full impact of the housing loss, thereby adversely impacting whether an applicant would be considered eligible for Direct Housing Assistance. Lastly, one commenter specifically stated that FEMA, during inspection, should count damages to mobile homes as personal property losses.

Once disaster survivors register for assistance, FEMA is required to verify losses to determine their eligibility for IHP assistance. FEMA uses multiple loss verification methods, including onsite and geospatial inspections as well as submitted documentation. FEMA may, at its discretion, determine other methods of verification (*i.e.,* remote inspections) that will be used to help verify loss and deliver assistance.[145] FEMA may also review and verify documentation for disaster-caused losses that cannot be verified through on-site or geospatial inspections.

FEMA inspectors are trained to identify post-disaster damage and record all appropriate evidence of any disaster damage. Home and/or property values are not considered during damage verification. While there are numerous checks and balances in place to verify consistent and accurate damage assessments, FEMA continues to explore ways to improve its loss verification methods.

Per IAPPG 1.1, FEMA may provide financial assistance to repair an owner-occupied primary residence, utilities, and residential infrastructure, including private access routes damaged as a result of a Presidentially-declared disaster up to the financial Housing Assistance maximum award. Home Repair Assistance is intended to make the damaged home safe, sanitary, or functional. Damage to real property components of the applicant's home is addressed under the IHP's Home Repair Assistance, regardless of the type of home. Mobile homes have unique real property components, and damage to these items are captured during inspection. Personal Property is not dependent on the type of home and is recorded under ONA.

Multifamily Lease and Repair

One commenter stated that FEMA should make more effort to aid residents of multifamily housing units in the wake of disasters.[146]

Section 408 of the Stafford Act, 42 U.S.C. 5174, limits IHP assistance to individuals and households; [147] therefore, in situations where multifamily housing units, such as a condominium, are damaged by a disaster, FEMA only provides financial Housing Assistance and ONA to owner-occupants for eligible disaster-caused damages to areas the owner is responsible for within their unit. These types of assistance do not cover repair for disaster-caused damage to multifamily housing units for structural elements (*e.g.,* roof, exterior walls, chimneys, and shared foundation) and common areas shared by all residents such as recreational facilities, outdoor space, parking, landscaping, fences, laundry rooms, and all other jointly-used space, unless these spaces are the individual's responsibility.

FEMA may provide Direct Temporary Housing Assistance to eligible applicants in the form of temporary rental units made available through repairs or improvements to existing, vacant multifamily housing units (*e.g.,* apartments). Under the Multifamily Lease and Repair program, FEMA may enter into lease agreements with owners of multifamily properties located in a disaster area and make repairs or improvements (including to structural elements and common areas of the multifamily properties) to provide temporary housing to eligible applicants. FEMA may utilize units repaired or improved under Multifamily Lease and Repair as temporary housing for eligible applicants who are unable to use Rental Assistance due to a lack of available resources. This type of Direct Temporary Housing Assistance is intended to repair or improve individual units to re-house existing tenants.[148]

Non-Traditional Housing

One commenter stated that FEMA does not recognize applicants who live in non-traditional housing such as ''boats, yurts, and travel trailers.'' The commentor requested that FEMA consider these as viable places of residence and recognize them for compensation.[149]

Per Chapter 3: II.B.*10.* of IAPPG 1.1,[150] eligible applicants who live in travel trailers and boats may be eligible for Home Repair Assistance and Home Replacement Assistance. Applicants residing in yurts and other unique homes may also receive Home Repair Assistance for any damaged structural elements of the home. However, Home Repair Assistance and Home Replacement Assistance is not available for other non-traditional forms of housing if they do not have structural elements to assess and calculate a repair or replacement award *(e.g.,* tents). By policy, FEMA defines non-traditional housing as a form of dwelling void of structural floor, structural walls, and structural roof. Applicants who reside in non-traditional housing who are able to verify occupancy may be eligible for initial Rental Assistance, Lodging Expense Reimbursement, and all types of Other Needs Assistance.

Ownership/Occupancy

All 26 comments received regarding FEMA's verification of applicant ownership and/or occupancy of their

[142] FEMA–2021–0011–0153.

[143] FEMA–2021–0011–0033, FEMA–2021–0011–0147, FEMA–2021–0011–0151, FEMA–2021–0011–0153, FEMA–2021–0011–0159, FEMA–2021–0011–0162, FEMA–2021–0011–0163, FEMA–2021–0011–0169, FEMA–2021–0011–0199, FEMA–2021–0011–0206, FEMA–2021–0011–0208, FEMA–2021–0011–0221, FEMA–2021–0011–0256, FEMA–2021–0011–0261, FEMA–2021–0011–0270, FEMA–2021–0011–0271, FEMA–2021–0011–0275, FEMA–2021–0011–0277, FEMA–2021–0011–0282, FEMA–2021–0011–0285, FEMA–2021–0011–0295, FEMA–2021–0011–0302, and FEMA–2021–0011–0310.

[144] FEMA–2021–0011–0169.

[145] FEMA uses a variety of techniques and technologies when conducting geospatial inspections. This includes using aerial and satellite photography and remote sensing technologies. For remote inspections, FEMA inspectors will contact applicants via phone and complete the standard onsite inspection process remotely based on responses from the applicant.

[146] FEMA–2021–0011–0268.

[147] 44 CFR 206.113(b)(9) further limits assistance by stating that FEMA may not provide IHP assistance for business losses, including farm businesses and self-employment.

[148] For additional information about Multifamily Lease and Repair, please see pages 107 to 112 of IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

[149] FEMA–2021–0011–0149.

[150] See page 62 of IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

disaster-damaged dwelling were consistent with one concern: the applicant's burden of proving ownership and/or occupancy, especially in relation to properties being passed down via heirship.[151]

Per IAPPG 1.1, FEMA verifies occupancy through an automated public records search or submitted documents. In locations where automated verification of public records is limited, FEMA may partner with applicable authorities from the State, local, Tribal, or Territorial government to verify ownership or occupancy. When FEMA is unable to verify an applicant's occupancy of their disaster-damaged primary residence, the applicant may provide FEMA with documentation for verification. Based on comments submitted via the April 22, 2021 RFI, FEMA updated its automated public records criteria along with its policy to provide more documentation flexibilities for verifying occupancy. Specifically, as outlined in the *Amendment to FEMA Policy (FP) 104–009–03, Individual Assistance Program and Policy Guide (IAPPG), Version 1.1* memorandum, dated September 2, 2021, FEMA will now accept social service organization documents, local school documents, Federal or State benefit documents, motor vehicle registration, affidavits of residency or court documentation, and mobile home park documents in addition to the documentation options listed in IAPPG 1.1 to verify occupancy. Furthermore, as an option of last resort, FEMA may accept a written self-declarative statement from applicants whose pre-disaster residence was a mobile home or travel trailer or from applicants living in insular areas, islands, and Tribal lands.

Like occupancy, when FEMA is unable to verify an applicant's ownership of their primary residence, the applicant may provide FEMA with documentation to prove ownership. Based on comments submitted via the RFI, FEMA also updated its policy to provide more documentation flexibilities in order to verify ownership. Specifically, as outlined in the *Amendment to FEMA Policy (FP) 104–009–03, Individual Assistance Program and Policy Guide (IAPPG), Version 1.1* memorandum, dated September 2, 2021, FEMA will now accept receipts for major repairs or improvements, mobile home park letters, court documents, and a public official's letter in addition to the documentation options listed in IAPPG 1.1 to verify ownership. Furthermore, as an option of last resort, FEMA may accept a written self-declarative statement from applicants whose pre-disaster residence was a mobile home or travel trailer, from applicants living in insular areas, islands, and Tribal lands, and from applicants whose pre-disaster residence was passed down via heirship.[152]

Both occupancy and ownership verification may be completed upon inspection if the applicant is able to show an acceptable document to the inspector. FEMA inspectors, however, will not accept self-declarative statements; this option of last resort must be mailed, uploaded to the applicant's online account, or submitted in person at a DRC.[153] For those applicants who are still unable to prove occupancy and ownership, FEMA will conduct proactive outreach via casework to ensure all eligible applicants are able to receive assistance.

Period of Assistance

Five commenters requested that the current period of assistance be extended or for there to be options in which it could be extended on an individual disaster basis.[154] One of the commenters stated that some applicants who received FEMA assistance to fix their homes had contractors take money for the repairs but not complete the work, that FEMA should take on the burden of the lost money, or otherwise ensure that the work is properly completed, and that assistance from FEMA should only be complete when the people in a household are fully, safely housed again.[155]

Section 408(c)(1)(B)(iii) of the Stafford Act, 42 U.S.C. 5174(c)(1)(B)(iii), limits IHP assistance to 18 months following the date of the disaster declaration. The period of assistance begins at the date of the Presidential disaster declaration and not the date on which the disaster is designated for IA. FEMA may extend the period of IHP assistance beyond 18 months due to extraordinary circumstances if an extension would be in the public interest, and FEMA has implemented this authority when warranted.[156] As the period of assistance is established in statute, it cannot be addressed in this rulemaking effort.

FEMA assistance is intended for disaster caused losses. Disputes between contractors and individuals are private civil matters, in which FEMA has no authority to intercede. These should be addressed by the applicant through appropriate legal channels.

Rental Assistance

One commenter stated that FEMA must include clear guidance in its policies to ensure that multifamily homes are treated in a fair and equitable manner, including expanding the definition of ''household'' so that multiple families in one housing unit are counted as separate households for purposes of calculating aid and are eligible for separate rental assistance when needed.[157] This situation is addressed in current FEMA policy.[158] FEMA may provide financial assistance to pre-disaster homeowners or renters to rent alternate housing if they are displaced from their primary residence as a result of a Presidentially-declared disaster. While FEMA typically will award Rental Assistance to the first individual who registers for the household, if a multifamily household is unable to relocate together due to extenuating circumstance, then FEMA may provide additional Rental Assistance to the other members of the household. Additionally, through this rule, FEMA is adding a new type of assistance—Displacement Assistance—that will provide an additional resource to applicants who must temporarily

[151] FEMA–2021–0011–0033, FEMA–2021–0011–0149, FEMA–2021–0011–0153, FEMA–2021–0011–0163, FEMA–2021–0011–0194, FEMA–2021–0011–0199, FEMA–2021–0011–0207, FEMA–2021–0011–0235, FEMA–2021–0011–0236, FEMA–2021–0011–0245, FEMA–2021–0011–0255, FEMA–2021–0011–0259, FEMA–2021–0011–0260, FEMA–2021–0011–0261, FEMA–2021–0011–0265, FEMA–2021–0011–0273, FEMA–2021–0011–0275, FEMA–2021–0011–0276, FEMA–2021–0011–0277, FEMA–2021–0011–0282, FEMA–2021–0011–0286, FEMA–2021–0011–0293, FEMA–2021–0011–0302, FEMA–2021–0011–0305, FEMA–2021–0011–0306, and FEMA–2021–0011–0310.

[152] Please see FEMA's Equity web page at Equity | *FEMA.gov* (last visited July 2, 2022.)

[153] FEMA inspectors do not have the ability to upload documentation into an applicant's file. Applicants may submit a self-declarative statement to FEMA by either mail, uploading the document into their online *www.disasterassistance.gov* account, or by visiting a DRC, where a FEMA employee may upload the document into their file.

[154] FEMA–2021–0011–0153, FEMA–2021–0011–0163, FEMA–2021–0011–0253, FEMA–2021–0011–0274, and FEMA–2021–0011–0277.

[155] FEMA–2021–0011–0274.

[156] The President has delegated authority to the Administrator of FEMA to determine whether due to extraordinary circumstances an extension of IHP assistance beyond the 18-month limit would be in the public interest. See 42 U.S.C. 5174(c)(1)(B)(iii). Executive Order 12148, Federal Emergency Management, July 20, 1979 and Department of Homeland Security Delegation 9001.1. The FEMA Administrator has delegated authority to the Assistant Administrator for the Recovery Directorate to extend this period if they determine that due to extraordinary circumstances an extension would be in the public interest. See 44 CFR 206.110(e) and section G.4. of the Federal Emergency Management Agency (FEMA) Delegation Number: FDA 112–002a–1 Issue Date: Oct. 30, 2020.

[157] FEMA–2021–0011–0295.

[158] See page 57 of IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

relocate from their home as the result of damage from a Presidentially-declared disaster. Displacement Assistance will be an award amount based on the daily rate established by the STT government and is intended to provide flexibility for applicants to address their short-term lodging needs via hotels, motels, friends and family, or other available options.

Another commenter stated that it is common in Puerto Rico for multiple homes to be built on a single lot and to have the same address and that this leads to a denial of assistance for the second family to apply due to suspected duplication of benefits.[159] Although FEMA did previously encounter difficulties distinguishing between separate homes on a single lot due to system limitations and lack of available third-party data, we now have a better understanding of these arrangements and have improved our processes [160] to ensure the appropriate assistance is provided to each family when FEMA can determine two separate homes exist and the applicants meet all other eligibility criteria.

Renter Assistance

Ten commenters stated that FEMA assistance is prioritized for homeowners and that programs and services need to be expanded to include renters and/or provide more assistance programs to benefit renters.[161] One commenter stated that FEMA should afford minority and poor families the opportunity to move to neighborhoods that are safer, the schools are better, and jobs are more available.[162] This commenter also suggested that the choice of where to live must be built into FEMA housing programs. Another commenter stated that FEMA provides assistance for hotel stays, but there are not many programs that provide rental assistance, security deposits, and application fees for survivors that have to relocate.[163] This commenter also stated that providing flexible funding for renters to replace appliances, furniture, clothing, and other necessary goods would be more beneficial. One commenter stated that the application for continuing Rental Assistance is onerous and difficult for survivors to complete. Further, applicants must continue to work toward obtaining permanent housing to remain eligible for continuing rental assistance.[164]

A few commenters suggested that FEMA should partner with HUD to design resilient and affordable housing relocation solutions and follow a similar approach to HUD's Community Development Block Grant—Disaster Recovery (CDBG–DR) program for clients who want to remain in their communities while reducing disaster risk.[165] Lastly, two commenters suggested longer-term, safe housing solutions that are affordable to renters, arguing that once the funds are exhausted for renters, FEMA transitional services are not timely or are complex processes causing victims to experience a period of homelessness.[166]

Some of these comments misconstrue FEMA policy. Per Section 408 of the Stafford Act, 42 U.S.C. 5174, FEMA may only provide financial assistance to repair an owner-occupied primary residence, utilities, and residential infrastructure, including private access routes damaged as a result of a Presidentially-declared disaster. FEMA does not have the authority to provide repair assistance to renters or landlords not occupying the damaged property as their primary residence.

Section 408 of the Stafford Act, 42 U.S.C. 5174, also states that FEMA may provide financial assistance, *i.e.,* Rental Assistance, to pre-disaster homeowners or renters to rent alternate temporary housing if they are displaced from their primary residence as a result of a Presidentially-declared disaster. FEMA may also provide Continued Temporary Housing Assistance (CTHA) to eligible applicants who exhausted previously awarded Rental Assistance (for its intended use), are unable to return to their pre-disaster residence because it is uninhabitable, inaccessible, or not available due to the disaster, and their post disaster housing costs represent 30 percent or more of their post-disaster household income.[167] This assistance may be provided for up to 18 months or until the end of the 18-month period of assistance, whichever comes first.[168] FEMA will also award applicants one additional month of rent when utilized for a security deposit. FEMA does not dictate where renters may choose temporary housing; rather, renters may choose where to live. Addressing the suggestion that FEMA partner with HUD to design a CDBG–DR equivalent, FEMA notes that HUD is a separate Federal agency with separate statutory authorities that differ from FEMA's both in terms of the structure of the Agency's programs and the objectives of those programs. Such a change is outside the scope of this rulemaking. However, FEMA is currently working with HUD on several housing issues in an effort to make better use of each agency's authorities in support of disaster survivors.

FEMA agrees that renters should have equitable access to IHP financial assistance. One type of assistance renters may currently qualify for is Personal Property Assistance. Under Section 408(e)(2) of the Stafford Act, 42 U.S.C. 5174(e)(2), FEMA may provide financial assistance under the ONA provision of the IHP to repair or replace personal property damaged or destroyed due to a disaster. FEMA assistance to repair and replace personal property may be provided for: appliances (standard household appliances such as refrigerator, washing machine, etc.); clothing (essential clothing needed due to overall loss, damage, or contamination); room furnishings (standard furnishings found in a bedroom, kitchen, bathroom, and living room); and essential tools (tools and equipment required by an employer for employment and items required for education).

Additionally, FEMA is committed to improving its Renter Assistance program in those areas where equity may be lacking. For example, as part of this rule, FEMA is broadening the IHP to encompass any damage to the applicant's primary residence that causes the home to be unsuitable for occupancy. This change allows more renters with minimal damages to qualify

[159] FEMA–2021–0011–0292.

[160] There are processes available in these types of unique situations where multiple households reside in the same house or there are multiple separate homes on the same property. In the case of multiple separate homes on the same property, applicants must demonstrate that the homes are separate structures, and for multiple households in the same home, they must demonstrate that they have a pre-disaster financial responsibility to the household, such as a formal agreement supported by pre-disaster rent receipts, cancelled checks, or money orders; pre-disaster lease, landlord's written or verbal statement, or rental agreement; or pre-disaster major utility bills.

[161] FEMA–2021–0011–0293, FEMA–2021–0011–0271, FEMA–2021–0011–0270, FEMA–2021–0011–0285, FEMA–2021–0011–0206, FEMA–2021–0011–0209, FEMA–2021–0011–0221, FEMA–2021–0011–0262, FEMA–2021–0011–0274, and FEMA–2021–0011–0187.

[162] FEMA–2021–0011–0199.

[163] FEMA–2021–0011–0275.

[164] FEMA–2021–0011–0295.

[165] FEMA–2021–0011–0231, and 0264.

[166] FEMA–2021–0011–0256, and 0296.

[167] See page 81 of IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

[168] FEMA may certify pre-disaster renters, up to 18-months or the end of the 18-month period of assistance, whichever comes first, for continued rent assistance when adequate, alternate housing is not available, or when they have not realized a permanent housing plan through no fault of their own. FEMA may certify pre-disaster owners for continued rent assistance, up to 18-months or the end of the 18-month period of assistance, whichever comes first, when adequate, alternate housing is not available, or when they have not realized a permanent housing plan through no fault of their own.

for Rental Assistance if they must relocate for a short time while repairs are made to their apartment.

As is discussed further below, FEMA is removing the requirement that applicants must apply and be denied for an SBA disaster loan before being considered for SBA-dependent ONA. Applicants may apply for an SBA loan for additional funds if they have an unmet need, but eligibility for Personal Property Assistance, Transportation Assistance, and Group Flood Insurance Policies will no longer be contingent on applying for and being denied for an SBA loan making them available to more renters.

Another example of how FEMA is making strides towards equity involves regulatory updates to CTHA. The rule update will add flexibility regarding FEMA's ability to provide some continued assistance without requiring substantial documentation from the applicant. FEMA is also making updates to its CTHA policy and the Application for CTHA forms so that applicants have a better understanding of what documentation is needed at each step of the process. Plus, the applicant having to work toward obtaining permanent housing in order to remain eligible for continued rental assistance increases the likelihood of successful recovery outcomes.

In addition, FEMA is implementing two new types of assistance, Serious Needs Assistance and Displacement Assistance. Serious Needs Assistance will provide funds to address immediate needs related to sheltering, evacuation, or other emergent disaster expenses. Displacement Assistance is intended to assist displaced applicants with the cost of short-term living arrangements immediately following a disaster.

SBA-Dependent ONA

The majority of commenters who commented on this requirement raised the same concern: FEMA should remove the requirement for applicants to apply for and be denied an SBA loan before receiving consideration for IA grants. The commenters stated the process is unclear and places an unnecessary burden on applicants; creates a disproportionate barrier; and may, at best, lead to a delay in the registration process, or, at worst, effectively block access to the grants.[169] Two commenters further expressed that forcing people to apply for an SBA loan after the initial registration is a barrier and deterrent to applying for help, especially in senior citizen communities as they do not want a loan and most are on a fixed income; for black disaster survivors who face their credit history being scrutinized without receiving tangible assistance; and for renters with low incomes, and for members of underserved communities, including people of color, who, many times, have a greater need than middle-income survivors.[170] Another commenter argued that FEMA should automatically qualify the application and denial steps of the SBA process for individuals who already receive needs-based assistance such as food stamps, Supplemental Security Income, and Social Security Disability Income to allow the most vulnerable to receive assistance more quickly and easily.[171] A few commenters offered solutions, such as that FEMA actively coordinate with the SBA to conduct pre-screening using SBA's established credit score and citizenship requirements before referring applicants to the SBA, and that FEMA's staff receive training on SBA-related issues and be able to answer questions about any aspect of the SBA's process.[172] One commenter stated that FEMA underassesses the needs of renters with low-incomes, and for members of underserved communities, including people of color, who seek to recover damaged personal property and vehicles by first requiring an application for an SBA loan, which causes delays in their application process.[173] Lastly, one commenter remarked that requiring an SBA loan denial as a prerequisite to receiving emergency aid burdens the applicant and paves the way for deeper poverty for survivors of natural disasters. This commentor further explained their perception that the ease to extend debt instruments (*i.e.,* an SBA loan) is in stark contrast to the denial of assistance due to the lack of legal documentation or a means to fight unjust denials.[174]

FEMA's current regulations under 44 CFR 206.119(a)(1)–(3) state that FEMA and the State may provide financial assistance to individuals and households who have other disaster-related necessary expenses or serious needs. Prior to this IFR, to qualify for assistance under this section, an applicant must also apply to the SBA Disaster Home Loan Program for all available assistance under that program; and be declined for SBA Disaster Home Loan Program assistance; or demonstrate that the SBA assistance received does not satisfy their total necessary expenses or serious needs arising out of the major disaster. FEMA's current 44 CFR 206.191(d) provides FEMA's sequence of delivery to ensure uniformity in preventing duplication of benefits. The delivery sequence pertains to that period of time in the recovery phase when most of the traditional disaster assistance programs are available. The delivery sequence includes in relevant part Housing Assistance pursuant to Section 408 of the Stafford Act, 42 U.S.C. 5174; SBA and Farmers Home Administration [175] disaster loans; and then ONA, pursuant to Section 408 of the Stafford Act, 42 U.S.C. 5174.

Prior to this IFR, FEMA's regulations required SBA referrals, but FEMA only required applicants whose self-reported income meets the SBA's minimum income requirements to apply for and be denied an SBA disaster loan before receiving consideration for SBA-dependent ONA, in an effort to minimize the burden on and expedite assistance to applicants whose income did not meet SBA's minimum income requirements. Based on comments submitted via the RFI, the SBA, in coordination with FEMA, raised the minimum income threshold so that more eligible lower income applicants could be assisted by FEMA as opposed to referred to SBA for a loan.

With this rule, FEMA is removing the requirement entirely that applicants must apply and be denied for an SBA disaster loan before being considered for SBA-dependent ONA. Removing this requirement will ensure low income and other vulnerable disaster survivors who may not have the means to obtain or repay a disaster loan due to their financial condition have equitable access to disaster assistance while also leveraging new ways to prevent duplication of benefits.[176]

Just because an applicant already receives needs-based assistance such as food stamps, SSI, and SSDI does not mean that they will be eligible for FEMA assistance. The applicant will have to meet the IHP eligibility

[169] FEMA–2021–0011–0245, FEMA–2021–0011–0251, FEMA–2021–0011–0255, FEMA–2021–0011–0275, and FEMA–2021–0011–0277.

[170] FEMA–2021–0011–0245 and FEMA–2021–0011–0277.

[171] FEMA–2021–0011–0245.

[172] FEMA–2021–0011–0255 and FEMA–2021–0011–0275.

[173] FEMA–2021–0011–0277.

[174] FEMA–2021–0011–0306.

[175] The Farmers Home Administration is now administered by the successor agencies of the Farmers Home Administration. The Farmers Home Administration disaster loans are now the Department of Agriculture disaster loans.

[176] FEMA currently shares relevant data with the SBA, and will continue to do so to ensure FEMA and the SBA continue to remain good partners and stewards of taxpayer dollars. FEMA and the SBA will continue to coordinate to ensure that FEMA assistance and SBA disaster loans do not cause a duplication of benefits for the same type of assistance.

requirements which have no link to income for the majority of IHP assistance. Therefore, FEMA cannot automatically qualify applicants for IHP assistance based upon their already receiving food stamps, SSI, and SSDI.

Self-Employed Workers

Two commenters stated that gig workers, artists, and other self-employed individuals do not receive the same assistance as other applicants.[177] One of those commenters detailed that FEMA should correct the inequity by extending eligibility to self-employed individuals for necessary expenses and serious needs for repair or replacement of tools, specialized or protective clothing and equipment required by an employer as a condition of employment. The commenter also stated that FEMA could streamline the process to remove obstacles that delay assistance to self-employed workers by eliminating the FEMA requirement for applicants to first apply for and be denied an SBA disaster loan before self-employed workers are eligible for Personal Property Assistance for necessary expenses and serious needs.[178]

Prior to this IFR, per 44 CFR 206.113(b)(9), FEMA may not provide IHP assistance for business losses, including farm businesses and self-employment. Under current policy, self-employed individuals are eligible for FEMA assistance for their personal losses except for necessary expenses and serious needs related to business losses.[179] Business losses include costs for essential tools, such as tool repair or replacement, computing devices, supplies, and uniforms, which may include specialized or protective clothing.

As part of this rule and in response to comments received during the Agency's RFI, FEMA is amending its regulations to allow FEMA to provide self-employed applicants with IHP financial assistance for necessary expenses and serious needs as it relates to self-employed applicants seeking assistance for the replacement of essential tools.[180] FEMA is also adding a new definition at 44 CFR 206.111 of ''essential tools'' to mean tools and equipment required for employment and items required for education. The changes will allow FEMA to provide assistance for disaster-damaged tools and equipment, or other items required for a specific trade or profession, for self-employed applicants, in their individual capacity.

In addition, this rule will remove the requirement for applicants to apply for and be denied an SBA loan before receiving ONA. For additional information, refer to the SBA-Dependent ONA discussion in section III.D.2 of this rule.

Single Application for Federal Assistance

Twenty-one commenters recommend merging the information collection authorities that govern over 19 other Federal agencies in order to form a single registration for disaster assistance.[181] These commenters point out how each of the separate registration processes of the various agencies places an unnecessary burden on the survivor as they try to recover from a disaster. One commentor also stated that the current documentation requirements and duplicative registration processes prevents them from receiving aid they would otherwise be eligible to receive.[182]

FEMA recognizes the complexities caused by multiple disaster registration processes and that data sharing might make it easier for survivors to access assistance. FEMA has previously examined whether a streamlined, one-stop shop application could be created and has identified statutory and administrative barriers that would prevent a single agency from collecting and sharing as wide a range of information as would be required for a unified application. A recent Government Accountability Office (GAO) report highlighted the potential benefits of a single application, but noted concerns about the feasibility of such an application and about whether it would actually reduce the complexity of Federal disaster recovery programs.[183] However, within the spirit of these comments, and aligned with existing authorities, FEMA is streamlining the application process to reduce the burden on applicants, and plans to implement the streamlined process by the end of this year.[184] This effort will also help prepare FEMA's technology platform to integrate with other Federal agency application platforms in the future, but such integration will likely still require multiple years of systems development. Nonetheless, FEMA continually assesses its application process and is open to other changes that would make it simpler or less burdensome for applicants.

Transparency

Eight commenters raised transparency concerns regarding FEMA's IHP policy and guidance. The comments focused mainly on how FEMA should make public the policy and determination process it uses before IA decisions are made.[185] Five commenters stated that FEMA should make FEMA's determination process for IA more transparent and accessible and that FEMA regulations should be easier to find.[186] Two of those commenters also stated that there is a general lack of transparency around FEMA's inspection process.[187] One commenter stated that FEMA denial codes used during Hurricane Harvey offer only vague reasons for a denial of renters and low-income homeowners.[188] This commenter also believes FEMA made processing mistakes during Hurricane Harvey and is refusing to release the data to allow for a proper determination if a significant number of these denials were made incorrectly. One commenter also noted that FEMA's eligibility codes are not publicly accessible, and when found, they do not provide a detailed

[177] FEMA–2021–0011–0187 and FEMA–2021–0011–0200.

[178] FEMA–2021–0011–0200.

[179] See page 168 of IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

[180] For self-employed applicants FEMA is requiring a written statement from the applicant, including an itemized list of essential tools, specialized or protective clothing, computing devices, and equipment required for self-employment, and verifying their need for the items. The statement must include ''I hereby declare under penalty of perjury that the foregoing is true and correct,'' and be signed by the applicant. Tax return documentation are required to establish self-employment (*e.g.,* Form 1040 or 1040–SR, Schedule C, etc.).

[181] FEMA–2021–0011–0033; FEMA–2021–0011–0151 Attachment 1; FEMA–2021–0011–0153; FEMA–2021–0011–0157; FEMA–2021–0011–0159; FEMA–2021–0011–0187; FEMA–2021–0011–0204; FEMA–2021–0011–0206; FEMA–2021–0011–0209; FEMA–2021–0011–0221; FEMA–2021–0011–0235; FEMA–2021–0011–0236; FEMA–2021–0011–0237; FEMA–2021–0011–0256; FEMA–2021–0011–0270; FEMA–2021–0011–0271; FEMA–2021–0011–0277; FEMA–2021–0011–0285; FEMA–2021–0011–0293; FEMA–2021–0011–0295; FEMA–2021–0011–0302.

[182] FEMA–2021–0011–0295.

[183] GAO–23–104956, *Disaster Recovery: Actions Needed to Improve the Federal Approach* (November 15, 2022).

[184] Once the streamlined applicant process is implemented, survivors applying for disaster assistance will have the ability to select the type of assistance they require and only have to answer questions directly related to the specific types of assistance they need. This will decrease the number of questions survivors need to answer and reduce the time to complete their disaster application online or at a FEMA Disaster Recovery Center.

[185] FEMA–2021–0011–0206, FEMA–2021–0011–0209, FEMA–2021–0011–0221, FEMA–2021–0011–0237, FEMA–2021–0011–0270, FEMA–2021–0011–0271, FEMA–2021–0011–0286, and FEMA–2021–0011–0295.

[186] FEMA–2021–0011–0033, FEMA–2021–0011–0245, FEMA–2021–0011–0157, FEMA–2021–0011–0285 and FEMA–2021–0011–0277.

[187] FEMA–2021–0011–0277 and FEMA–2021–0011–0285.

[188] FEMA–2021–0011–0277.

explanation of the code.[189] Another commenter stated that FEMA should publicize the RSMeans amounts.[190] Lastly, another commenter suggested that FEMA should release information about the contracting process for IA in a transparent and more equitable way.[191]

The Stafford Act and FEMA's regulations at 42 U.S.C. 5174 and 44 CFR 206.101–120 govern IHP's eligibility criteria. The Stafford Act and FEMA regulations are publicly available and can be found online by searching on *www.fema.gov* and *www.ecfr.gov.*

FEMA embraces the tenets of transparency, participation, and collaboration to support citizens and first responders to increase government accountability, innovation, and effectiveness. To provide greater transparency on the IHP, FEMA released the *Individuals and Households Program Unified Guidance* (IHPUG) on September 30, 2016. The IHPUG compiled FEMA policy for each type of assistance under the IHP into one comprehensive document and was intended to serve as a singular policy resource for State, local, Territorial, and Tribal governments, and other entities who assist disaster survivors with post-disaster recovery. The IHPUG was eventually superseded by the *Individual Assistance Program and Policy Guide,* which was released on January 19, 2019. The IAPPG consolidated policy statements from all IA Programs to include IHP, Mass Care and Emergency Assistance, and the Community Services. On May 26, 2021, FEMA released FP 104–009–03, IAPPG 1.1, which supersedes the IAPPG, Version 1.0. IAPPG 1.1 [192] incorporates policy changes to the IHP resulting from Disaster Recovery Reform Act of 2018 (DRRA),[193] and provides an updated guide to programs and activities available to an affected State, local, Territorial, or Tribal government following a disaster. Chapter 3.III.B. of the IAPPG includes information of how FEMA verifies losses via inspections.

To increase consistency in implementation, collaboration, and knowledge sharing between State, local, Territorial, or Tribal governments, FEMA, and other Federal and non-Federal entities who assist disaster survivors, FEMA conducts a comprehensive review of IA policies no less than every 3 years. If FEMA determines it necessary to release new or updated policy language before the next scheduled update, FEMA will update the electronic version of the IAPPG, issue a memorandum describing the additions or updates, and post both documents at *www.fema.gov.*

FEMA continuously seeks to improve public awareness and understanding of FEMA's programs. Some of the comments underestimate the transparency of FEMA policy. Uniform eligibility criteria are currently in place and available to the public. FEMA makes all policies, fact sheets, guidance, news, and multimedia content available online at *www.fema.gov.* FEMA continually updates and assesses the clarity and effectiveness of its IHP eligibility letters to ensure applicants are properly informed of the reasons for and consequences of FEMA's eligibility determinations, and how the decision may be appealed. Applicants who do not understand FEMA's determination process or have additional questions after receiving an eligibility letter can call FEMA's Helpline to request additional information.

Existing technology for dissemination of disaster data includes OpenFEMA.[194] Building off of the DHS Open Government plan,[195] the OpenFEMA initiative proactively publishes data relevant to its mission and in open formats that are easily accessible to the public. FEMA has a long history of engaging non-profits, local communities and non-governmental organizations (NGOs) and private entities to prepare for, protect from, respond to, recover from and mitigate hazards. This initiative aims to ensure FEMA is providing timely, usable, and accurate data in a raw format to constituents. This enables stakeholders to leverage the data in innovative and value-added ways. The OpenFEMA database is widely used, receiving approximately 8 million requests for data from roughly 64,000 unique visitors each month. Most importantly, by proactively releasing information on an ongoing basis, this initiative makes it easier to operationalize live data during a disaster. FEMA will continue to leverage innovative methods to collect and share data while adhering to all applicable laws and policies.

RSMeans, *http://www.rsmeans.com,* is one of a number of commercial sources that produces industry-accepted guides of construction cost information to support estimating the repair or replacement cost of a building. Under FEMA's contract with RSMeans, the company identifies some of the costs to repair or replace damaged real and personal property based on geographic area. FEMA may not share RSMeans amounts, however, because the contract does not permit us to publicly post the company's proprietary data.

Some of the comments touch on Mass Care and Direct Housing changes, which are outside the scope of this rule. A separate effort is underway to improve Direct Housing and other areas of IA that involve contracting.

Also, in an effort to advance equity and improve program administration, in August of 2022, FEMA began gathering demographic information from disaster survivors that choose to provide it. This data will be used to assess the impact of IA Programs on underserved populations.

Transportation Assistance

One commenter noted that FEMA should provide resources to help displaced households without access to cars obtain funding for increased transportation costs (*e.g.,* the use of Uber or Lyft).[196] Another commenter stated that FEMA should provide transportation assistance to applicants to use public transportation services (*i.e.,* bus, metro).[197]

Per Section 408(e)(2) of the Stafford Act, 42 U.S.C. 5174(e)(2), and as outlined on page 170 of the IAPPG 1.1, FEMA may provide financial assistance under the ONA provision of the IHP to individuals and households with disaster-caused vehicle repair or replacement expenses. Unlike most other forms of IHP assistance, an applicant seeking Transportation Assistance does not need to live in the Presidentially-declared area to be considered for assistance.[198] The affected STT government establishes the maximum amount of Transportation Assistance (*i.e.,* Transportation Repair and Transportation Replacement) that may be awarded. The amount of Transportation Repair and Replacement Assistance awarded is based on the degree of damage and the STT government's repair and replacement maximum.

[189] FEMA–2021–0011–0199.

[190] FEMA–2021–0011–0260.

[191] FEMA–2021–0011–0275.

[192] See page 7 of IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

[193] Disaster Recovery Reform Act of 2018, Public Law 115–254, 132 Stat. 3448 (Oct. 5, 2018), 42 U.S.C. 5174(h).

[194] See OpenFEMA, *https://www.fema.gov/about/reports-and-data/openfema.*

[195] DHS, Open Government Plan 2016–2018 (Oct. 21, 2016), available at *https://www.dhs.gov/sites/default/files/publications/2016%20Open%20Government%20Plan_vFinal.pdf.*

[196] FEMA–2021–0011–0235.

[197] FEMA–2021–0011–0244.

[198] See page 170 of IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

Understanding that applicants have serious and immediate needs after a disaster, including for transportation costs, this rule revises FEMA's regulations in order to establish Serious Needs Assistance. Through these changes, FEMA will provide more immediate financial assistance under the ONA provision of the IHP to applicants who have necessary expenses or serious needs as a result of a disaster. Serious needs may include but are not limited to: water, food, first aid, infant formula, diapers, personal hygiene items, and fuel for or the cost of transportation. FEMA's implementation of Serious Needs Assistance will also provide funds to address immediate needs related to sheltering, evacuating, or other emergent disaster expenses. As this assistance is intended to provide applicants the financial means to address immediate serious needs prior to FEMA's evaluation of their eligibility for other disaster assistance programs, FEMA will limit assistance to those applicants who are displaced from their pre-disaster primary residence as a result of the disaster or who are sheltering in their pre-disaster residence and report a need to shelter elsewhere, and who assert they have a serious need at registration and request financial assistance for those needs and expenses.

Utilities

One commenter stated that FEMA needed to provide more assistance to applicants to ensure their utility bills are paid.[199] FEMA may provide assistance toward utility bills in limited circumstances. For example, FEMA may provide financial assistance to pre-disaster homeowners or renters to rent alternate temporary housing if they are displaced from their primary residence as a result of a Presidentially-declared disaster. FEMA awards eligible applicants initial Rental Assistance based on the Fair Market Rent (FMR) established by HUD for the county, parish, Tribal land, municipality, village, or district where the pre-disaster residence is located and the number of bedrooms the household requires. Utility costs are factored into the FMR rate established by HUD. Additionally, should an applicant need continued rental assistance, the cost of utilities is factored into the CTHA award amount provided. Homeowners may also provide their pre-disaster housing costs (to include utilities) in order to show a continued financial need for CTHA. Under section 408 of the Stafford Act, 42 U.S.C. 5174(c)(1)(A), however, FEMA, is not able to provide assistance for pre-disaster utility bills or for any utility bills from the residence from which the applicant was displaced.

Other Comments on IHP Delivery

One commenter raised the issue that FEMA's assistance is often times proportional to the survivor's pre-disaster financial condition. This commenter, and a few others, expressed that FEMA should prioritize assistance to individuals with fewer resources or capabilities [200] including underserved communities and individuals who are near or below the poverty level and cannot afford insurance.[201] Multiple commenters expressed concern that FEMA's housing programs are overly complex to navigate,[202] especially for survivors whose first language is not English.[203]

Two of those commenters suggested that FEMA should proactively go into communities disproportionately impacted by emergencies to assist survivors in navigating the process and accessing resources. Specifically, these commenters noted that disaster survivors should be able to access these resources without the need to apply for FEMA assistance.[204]

One commenter noted that survivors with LEP experience delays in recovery and often times receive denials for disaster assistance caused by miscommunications and misunderstandings of document requirements and lack of services to obtain equitable access to resources and assistance.[205] Another commenter expressed that FEMA should provide assistance to local governments so that local officials could work within the community to ensure disaster survivors understand where and how to obtain disaster assistance. Alternatively, another commenter believed that FEMA should provide better outreach to underserved communities in order to inform and help survivors access and apply for FEMA's programs.[206]

Three commenters suggested that FEMA should develop an internal program and policy evaluation capacity which would reduce the need for external review boards and inspector general audits that are more costly to the U.S. taxpayer and burdensome to FEMA personnel but results in little to no improvements in program equity.[207]

Two commenters expressed that FEMA should apply the least restrictive guidance regarding documentation requirements across all jurisdictions to minimize administrative time, confusion, and inconsistencies from disaster to disaster, expressing that one way to start is for FEMA to apply more flexibility in its ''use of funds'' policy which would allow survivors to repurpose their rental assistance for home repair or vice versa in order to prioritize their own recovery needs.[208] Two commenters expressed that FEMA's ''use of funds'' guidance leads to long wait times for FEMA assistance, communicates distrust between government and residents, and leaves owners and renters of substandard/damaged dwellings waiting for assistance especially for lower-income and underserved groups. A third commenter presented another example indicating that FEMA's strategy to provide limited assistance for temporary home repairs puts vulnerable communities at a greater risk to experience additional disasters due to climate change, and these vulnerable communities would greatly benefit from FEMA's consideration for permanent repairs to include minor cosmetic damage that can lead to further damage if left unrepaired.[209] A fourth commenter noted that requiring applicants to have a bank account is an example of how FEMA's regulations and/or policies are complicated and negatively impact accessing assistance for underserved communities.[210] In addition to the previous four examples, one commenter raised the issue that FEMA's annual adjustments of maximum IHP assistance should consider local rent control and stabilization protection limits.

A commenter stated that FEMA should include subsistence activities under ONA.[211] Furthering that issue, another commenter expressed that climate injustice impacts indigenous people namely harvesters (fisher people), stating FEMA does not recognize them as businesses and denies assistance although they are registered within their Tribes as harvesters. This commenter also highlighted the difficulties experienced by black communities in receiving prompt

[199] FEMA–2021–0011–0033.

[200] FEMA–2021–0011–0005, FEMA–2021–0011–0159, and FEMA–2021–0011–0236.

[201] FEMA–2021–0011–0159.

[202] FEMA–2021–0011–0159, FEMA–2021–0011–0265, and FEMA–2021–0011–0276.

[203] FEMA–2021–0011–0276.

[204] FEMA–2021–0011–0159, and FEMA–2021–0011–0265.

[205] FEMA–2021–0011–0193.

[206] FEMA–2021–0011–0287.

[207] FEMA–2021–0011–0163, FEMA–2021–0011–0224, and FEMA–2021–0011–0254.

[208] FEMA–2021–0011–0235 and FEMA–2021–0011–0281.

[209] FEMA–2021–0011–0270, FEMA–2021–0011–0271, and FEMA–2021–0011–0285.

[210] FEMA–2021–0011–0281.

[211] FEMA–2021–0011–0246.

assistance and communicating with FEMA during Hurricanes Laura and Delta, noting that the New York Times recently cited a study showing that the higher the rate of black households in a ZIP code, the less likely they are to receive an inspection.[212] This commenter also expressed the need for FEMA to provide housing assistance to unhoused or paroled individuals.[213]

Another commenter raised the issue that the process between registration and receipt of assistance is too long, confusing, and biased against persons or families in underserved communities, including people of color, and especially for the elderly/disabled individuals who have to wait on insurance adjustments in order to complete and collect documents required for FEMA's eligibility process.[214] This commenter also suggested that FEMA consider subsidized air filters, cooling, and other assistance for pregnant individuals.[215]

One commenter suggested that FEMA track and analyze who starts but does not finish the registration process to better understand barriers experienced by applicants seeking disaster assistance. This commenter raised the issue that FEMA's registration and the CTHA processes are burdensome, due to the length of the forms and instructions and the lack of a list of required documents, especially for survivors in poverty who may not be residing in traditional housing or not under a traditional written lease. This commenter suggested that FEMA completely remove its documentation requirements as applicants already have to certify the information provided is true and correct.[216]

Similarly, another commenter noted that survivors have difficulty after a disaster with collecting required documentation to complete a disaster registration and/or provide eligibility documentation after they have registered. This commenter also stated that FEMA should change its authorities to allow temporary to permanent housing solutions instead of just temporary housing assistance. Lastly, they remind FEMA that disaster assistance must be fair, equitable, and based upon an objective assessment of need.[217]

One commenter raised the suggestion for FEMA to provide two-way travel support to evacuated residents who want to return to their homes and provided examples of the challenges faced in Puerto Rico to include that some travel support was only available for residents who wanted to leave Puerto Rico and had the resources to start anew somewhere else, but others who lacked those resources experienced an insurmountable barrier to returning due to one-way travel restrictions.[218]

One commenter raised the issue that due to the lack of development for post-disaster replacement housing or existing overcrowding in Tribal communities, temporary housing often becomes de facto permanent housing, leaving many families to never recover or regain their housing and become permanently displaced.[219] This commenter proposes implementing post-disaster temporary-to-permanent housing solutions in communities, with an emphasis on tribal communities. One commenter stated that FEMA mandates applicants leave their residences as a condition of eligibility in order to receive disaster assistance and requested the removal of this requirement.[220] Another commenter expressed that IA should mimic Public Assistance's decision to remove the obtain/maintain flood insurance requirement for applicants who receive less than $5,000 to repair their damaged structure located in a SFHA.[221]

FEMA provides IHP assistance without concern to socioeconomic factors or gender, race, or ethnicity. IHP assistance provides financial assistance and direct services to eligible individuals and households who have uninsured or underinsured necessary expenses and serious needs caused by a disaster; it is intended to meet basic needs and supplement disaster recovery efforts. IHP assistance is not a substitute for insurance and cannot compensate for all losses.

As outlined in Section 408(h) of the Stafford Act, 42 U.S.C. 5174(h), the amount of financial assistance an individual or household may receive under IHP is limited. Financial Housing Assistance and ONA have independent and equal financial maximums, and FEMA adjusts these maximum awards each fiscal year based on the CPI–U. Temporary Housing Assistance, including Lodging Expense Reimbursement, Rental Assistance, and CTHA, are not counted toward the financial Housing Assistance maximum award.

FEMA understands that an applicant's pre-disaster financial and living situation may impact their post-disaster resources or capabilities, and increasing equity in disaster assistance outcomes is an area of focus for FEMA. As part of this rule, and as discussed above, FEMA is removing the requirement for disaster-damaged real property components to be functional immediately before the disaster to provide assistance for pre-existing damage exacerbated by the disaster. Applicants without the means to pay for minimal damage, or who are unable to complete the work themselves—often low-income or other underserved populations—may be eligible for repair assistance under the changes. The intent is still to limit assistance to disaster damage impacting the home.

One comment mentioned the disproportionate distribution of assistance based on an individual's or household's financial situation prior to the disaster.[222] While the value of an applicant's home prior to the disaster is not a consideration for FEMA assistance, FEMA recognizes that lower income survivors may have smaller homes with fewer rooms leading to smaller average awards than more wealthy applicants with larger homes. The self-reported income at Registration Intake is used to determine whether the applicant meets the SBA disaster loan income requirements to be considered for a disaster loan for SBA-dependent ONA. Based on comments submitted via the RFI, the SBA, in coordination with FEMA, raised their minimum income threshold so that more eligible lower income applicants could be assisted by FEMA as opposed to referred to SBA for a loan. Additionally, as part of this rule, FEMA is removing the requirement that applicants must apply and be denied for an SBA disaster loan before being considered for SBA-dependent ONA. Applicants may apply for an SBA loan for additional funds if they have an unmet need, but eligibility for Personal Property Assistance, Transportation Assistance, and Group Flood Insurance Policies will no longer be contingent on applying for and being denied for an SBA loan.

The September 2, 2021, *Amendment to FEMA Policy (FP) 104–009–03, Individual Assistance Program and Policy Guide (IAPPG), Version 1.1* memorandum also amended the Home Repair Assistance section in IAPPG 1.1 to include financial assistance to repair real property components impacted by

[212] FEMA generally conducts an inspection (onsite and/or geospatial) and considers documentation as methods to verify losses, which is required to determine eligibility for assistance. See IAPPG p. 72.

[213] FEMA–2021–0011–0274.

[214] FEMA–2021–0011–0256.

[215] FEMA–2021–0011–0258.

[216] FEMA–2021–0011–0275.

[217] FEMA–2021–0011–0277.

[218] FEMA–2021–0011–0292.

[219] FEMA–2021–0011–0293.

[220] FEMA–2021–0011–0295.

[221] FEMA–2021–0011–0303.

[222] FEMA–2021–0011–0005.

disaster-caused mold growth. The amendment's expressed intent was to support low income and other underserved disaster survivors who may not have the means to immediately address disaster damage, particularly when disasters are not declared immediately or inspections are delayed. However, all applicants with disaster-caused mold damage may be eligible for the assistance when they meet all other conditions of eligibility. These additional funds are provided as part of the Home Repair Assistance award when applicable.

Also, as part of this rule, FEMA is making changes to the current regulations, at 44 CFR 206.111, that will broaden its definition of ''uninhabitable'' as discussed below in section III.D. of this IFR. The changes to 44 CFR 206.117 will remove the requirement for disaster-damaged real property components to be functional immediately before the disaster. These changes will allow IHP to provide assistance for pre-existing damage exacerbated by the disaster, which will create more flexibility within the program to meet disaster survivors' unique recovery needs.

Another example of how FEMA is seeking to improve equity involves the regulatory updates to CTHA. This rule will add flexibility regarding FEMA's ability to provide some continued assistance without requiring substantial documentation from the applicant, while simplifying assistance delivery and reducing processing time. FEMA is making updates to its CTHA policy by adding a new form, the IHP Supplemental Application for CTHA form,[223] and revising the IHP Application for CTHA form [224] so that applicants have a better understanding of what documentation is needed at each step of the process.

The updates to CTHA policy and the applicable CTHA forms are intended to address to concerns raised by organizations and the public in general about the CTHA process. All changes—working together—are intended to better assist applicants in obtaining a permanent housing solution by the 18-month period of assistance.

With respect to internal program and policy evaluation, FEMA is committed to improving our programs and internal processing capabilities, and previously established the IA Audit Section. This Section evaluates internal controls and makes recommendations for operational improvements within IA disaster assistance activities. The improvement recommendations are the results of thorough internal audits, studies, and investigations. The Audit Section's focus is to ensure compliance with the Stafford Act and other applicable laws and regulations. FEMA also has a Recovery Reporting and Analytics Division (RAD). This Division serves as the primary resource pool for analytical efforts and is focused on providing analysis and information that is targeted to inform specific operational or strategic decisions. FEMA also has a Continuous Improvement Division that routinely conducts reviews and issues internal after-action reports/recommendations on a variety of issues.[225]

FEMA also recently reviewed our policies and processes to improve the application process. Based on comments submitted via the RFI, FEMA updated its policy to provide more documentation flexibilities in order to verify occupancy. Specifically, as outlined in the *Amendment to FEMA Policy (FP) 104–009–03, Individual Assistance Program and Policy Guide (IAPPG), Version 1.1* memorandum, dated September 2, 2021, FEMA will now accept social service organization documents, local school documents, Federal or State benefit documents, motor vehicle registration, affidavits of residency or court documentation, and mobile home park documents in addition to the documentation options listed in the IAPPG 1.1 to verify occupancy. Furthermore, as an option of last resort, FEMA may accept a written self-declarative statement from applicants whose pre-disaster residence was a mobile home or travel trailer or from applicants living in insular areas, islands, and Tribal lands.

Like occupancy, when FEMA is unable to verify an applicant's ownership of their primary residence, the applicant may provide FEMA with documentation to prove ownership. Based on comments submitted via the RFI, FEMA also updated its policy to provide more documentation flexibilities in order to verify ownership. Specifically, as outlined in the *Amendment to FEMA Policy (FP) 104–009–03, Individual Assistance Program and Policy Guide (IAPPG), Version 1.1* memorandum, dated September 2, 2021, FEMA will now accept receipts for major repairs or improvements, mobile home park letters, court documents, and a public official's letter in addition to the documentation options listed in IAPPG 1.1 to verify ownership. Furthermore, as an option of last resort, FEMA may accept a written self-declarative statement from applicants whose pre-disaster residence was a mobile home or travel trailer, from applicants living in insular areas, islands, and Tribal lands, and from applicants whose pre-disaster residence was passed down via heirship.

Both occupancy and ownership verification may be completed upon inspection if the applicant is able to show an acceptable document to the inspector. FEMA inspectors, however, will not be able to accept self-declarative statements as they are an option of last resort.

FEMA recognizes that effective communication access regarding FEMA programs is essential in the recovery process, including during inspection, for all disaster survivors. FEMA has many ways to meet survivors' language needs. Many FEMA employees are bilingual or multilingual and can assist LEP survivors with registration in their primary language by phone and in-person at a DRC. When survivors visit a DRC there is a sign with the phrase ''If you do not speak English'' in over 40 languages. A DRC staff member will use that sign to determine what language the LEP survivor speaks and call for an interpreter to assist them. Applicants may also request language access by contacting FEMA's Helpline at 800–621–3362 (711 or VRS available). FEMA's Helpline has translation and interpretation services (provided by qualified translators and interpreters) available in 250 languages to assist LEP disaster survivors. FEMA often sends Disaster Assistance Teams into the affected communities to help survivors apply for IHP assistance. Or, FEMA may provide Mobile Registration Intake Centers which ease disaster survivor burden with registration as they provide survivors a way to perform initial registration, some technical assistance on current registrations, and allow them to have documents scanned into their case files. FEMA may also coordinate with the State, local, Tribal, or Territorial government to send staff into emergency shelters to assist survivors. FEMA staff are equipped with computers or similar devices to assist survivors with registering for IHP

[223] FF–104–FY–21–115.

[224] FF–104–FY–21–115.

[225] Due to the scope and nature of after-action review products, these reports are intended for internal FEMA use and are often not applicable to external audiences. However, to contribute to a larger body of knowledge and foster lessons learned sharing within the emergency management community, after-action review products can be made available to jurisdictions and other Federal agencies that request them or as directed by the Regional Administrators, where appropriate. The general public release of after-action review reports only occurs for reports of national significance as deemed by Agency leadership.

assistance or providing them referrals to other resources.

FEMA remains committed to ongoing community engagement and communication with our stakeholders to better understand the needs of traditionally underserved communities and sharing information regarding disaster preparedness and recovery assistance. FEMA has focused on hiring more bilingual employees, including hiring local staff in affected areas with large Spanish-speaking populations.

One commenter appeared to misunderstand FEMA's Section 425, 42 U.S.C. 5189c, Transportation Assistance policy, implying that FEMA only provides assistance for survivors to evacuate their homes and not assistance to return. As outlined in Appendix A of IAPPG 1.1, the Stafford Act authorizes FEMA to provide assistance, when approved, to relocate individuals displaced from their pre-disaster primary residences as a result of a major disaster or emergency or otherwise transported from their pre-disaster residence under Section 403(a)(3) or Section 502 of the Stafford Act, 42 U.S.C. 5170b(a)(3) and 42 U.S.C. 5192, to and from alternative locations for short or long-term accommodation or to return an individual or household to their pre-disaster primary residence or alternative location. Contrary to the comment, per IAPPG 1.1, eligible expenses may include one round trip airfare for all pre-disaster household members and household pets and service animals.

A few other commenters also misconstrued other areas of IHP policy.[226] For instance, applicants do not need to have a bank account in order to receive FEMA assistance. In addition to providing assistance via direct deposit, applicants can opt to receive assistance via check. Additionally, there are only a few types of assistance that are contingent on whether an applicant has relocated from their damaged dwelling (*i.e.,* Lodging Expense Reimbursement, Rental Assistance, and Critical Needs Assistance (CNA)). Regardless of whether an applicant chooses to relocate from their disaster-damaged dwelling, applicants may be eligible to receive Home Repair Assistance or Home Replacement Assistance, along with other types of ONA such as Personal Property Assistance. Lastly, one commenter mentioned FEMA's use of funds policy.[227] Section 314 of the Stafford Act, 42 U.S.C. 5157, governs FEMA's misuse of funds provision to state that individuals who knowingly misapply the proceeds of assistance provided via the Stafford Act shall be penalized. FEMA has limited discretion in how it implements this statutory provision. Even if the problems identified by the commenter, such as long wait times, are the result of the use of funds policy, FEMA lacks the authority to remove this limitation. Nevertheless, there are still some flexibilities with how an applicant may use their IHP assistance. For example, an applicant who receives Home Repair or Home Replacement Assistance may use the funds to either repair their disaster damaged dwelling or for the purchase of a home in a different location. Similarly, applicants who receive Rental Assistance may choose to use that assistance in any location around the United States.

With respect to the comment that IA should remove the obtain/maintain flood insurance requirement for applicants who receive less than $5,000 to repair their damaged structure located in a SFHA, FEMA's discretion to waive this requirement is limited by certain statutory provisions. Under the Flood Disaster Protection Act of 1973, FEMA may not approve any financial assistance for acquisition or construction purposes for use in any SFHA where the sale of flood insurance has been made available under the NFIA, 42 U.S.C. 4001 *et seq.,* unless the building or mobile home and any personal property to which such financial assistance relates is covered by flood insurance in an amount at least equal to its development or project cost. See 42 U.S.C. 4012a(a). FEMA understands that flood insurance policies may be cost prohibitive for some disaster survivors as they are trying to recover from a major disaster. A GFIP is a form of assistance that can help applicants who have trouble affording an initial flood insurance policy. FEMA establishes a GFIP for each disaster declaration that results from flooding and is authorized for IA. FEMA's existing regulations at 44 CFR 206.119(d) provide that individuals identified by FEMA as eligible for ONA as a result of flood damage caused by a Presidentially-declared major disaster and who reside in a SFHA may be included in a GFIP established under the NFIP regulations at 44 CFR 61.17. A GFIP has a 3-year policy term and payments to cover the premium amounts for each applicant are necessary expenses eligible under ONA. Covering the first 3 years of applicants' flood insurance policies helps them to maintain that coverage even when dealing with other disaster-related expenses that might otherwise prevent them from being insured.

D. Changes in Policy Positions To Increase Equity in IHP

As directed by Executive Order 13985 on ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government'' and Executive Order 14091, ''Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.'' FEMA assessed whether underserved communities and their members face systemic barriers in accessing benefits under IHP and how any such barriers could be reduced. FEMA's assessment was informed by longstanding challenges individuals have reported facing in navigating IHP, the income project,[228] and comments its stakeholders made in response to the equity RFI. FEMA balanced these potential changes with the statutory requirement that financial assistance under the Stafford Act should be a supplemental form of assistance that addresses disaster-related necessary expenses and serious needs and may not duplicate other forms of assistance. As a result of this assessment, FEMA determined it needed to re-visit and change position on certain policy positions that have resulted in inequities in the delivery of IHP.[229] This section identifies prior policy positions FEMA has articulated for specific areas of IHP that have had the unintended consequence of creating inequities in the program and will be remedied with this IFR.

1. Treatment of Insurance Proceeds

FEMA provides IHP financial assistance to applicants for uninsured or underinsured disaster-caused expenses up to the IHP cap for the applicable form of assistance. Pursuant to existing regulations at 44 CFR 206.113(a)(4) and (a)(6), however, insured applicants are only eligible for such assistance if the net insurance settlement amount from insurance is: (1) less than the maximum

[226] FEMA–2021–0011–0235, FEMA–2021–0011–0281, and FEMA–2021–0011–0295.

[227] FEMA–2021–0011–0235.

[228] FEMA, Individuals & Households Program Survivor Income Analysis (2019) and Survivor Income Analysis: Phase 2—Drivers of variance in IHP assistance across income groups (2019). See Docket ID FEMA–2023–0003 on *www.regulations.gov.*

[229] FEMA also determined it needed to expand or improve existing forms of assistance under IHP to better address disaster needs and to simplify processes and documentation requirements that serve as barriers to equal opportunity. Those changes are addressed in Section IV's Discussion of the Interim Final Rule but do not require the additional analysis provided here because they are not changes in policy position.

amount of assistance FEMA can authorize under IHP; and (2) insufficient to cover the insured applicant's necessary expenses or serious needs. FEMA introduced the current language in 2002 through an NPRM [230] proposing regulations creating the IHP to implement amendments to the Stafford Act from the Disaster Mitigation Act of 2000 (DMA2K).[231]

DMA2K amended the Stafford Act primarily to authorize a program for predisaster mitigation, but also to streamline the administration of disaster relief and control the Federal costs of disaster assistance.[232] For example, DMA2K enumerated the types of housing assistance available to individuals and set, for the first time via statute, sub-caps for repair and replacement assistance that were relatively low—$5,000 for repair assistance and $10,000 for replacement assistance.[233] FEMA had to determine how to implement DMA2K within this context and within the context of the existing duplication of benefits provision in the Stafford Act which prohibits FEMA from providing assistance to individuals that duplicates assistance that has been provided under any other program or from insurance or any other source.[234]

FEMA did not specifically provide a rationale for, or consider any alternatives to, comparing the amount of insurance proceeds to the IHP cap in the preamble to its 2002 regulation; however, by making it a condition of eligibility that the amount of the insurance proceeds an individual receives must be less than the maximum amount of IHP assistance available, FEMA essentially determined that any insurance payout an applicant receives should be deducted from the amount of the FEMA Verified Loss as if it were automatically duplicative of the assistance FEMA might be authorized to provide. The Stafford Act does not require this result: FEMA is authorized to provide financial assistance, and, if necessary, direct services, to individuals and households who, as a direct result of a major disaster, have necessary expenses and serious needs that they are unable to meet through other means.[235]

FEMA's 2002 interpretation may have made sense in the context of DMA2K in which Congress expressed intent to control the costs of disaster assistance and established, for the first time via statute, low sub-caps on repair and replacement assistance.[236] However, Congress has since indicated clear intent to increase the amount of assistance FEMA provides to individuals and households. For example, in PKEMRA, Congress removed the $5,000 and $10,000 caps on repair and replacement assistance and expanded other forms of assistance under IHP.[237] In DRRA, Congress more than doubled the amount of assistance available under IHP and removed the caps for accessibility-related real and personal property items for applicants with disabilities.[238] However, despite this clear Congressional intent to increase the amount of assistance FEMA provides to individuals and households, FEMA never re-visited its prior interpretation that any insurance proceeds should be automatically deducted from the total amount it provides to individuals.

This has resulted in an implementation inequity that penalizes the applicants with the most insurance coverage. Eligible applicants may receive the difference between the net insurance settlement amount and the amount of FEMA verified loss, up to the IHP cap. When an applicant's net insurance settlement amount from insurance is equal to or exceeds the IHP cap, FEMA determines that the applicant's need has been met by insurance and will not provide any additional assistance. In practice, what this means is that even when an applicant's net insurance settlement amount is less than the loss amount verified by FEMA (*i.e.,* the applicant has an unmet need), an applicant is not eligible for IHP assistance if their net insurance settlement exceeds the IHP cap. Conversely, a similarly situated applicant with a net insurance settlement amount less than the IHP cap is eligible to receive IHP assistance to address their remaining unmet need in an amount up to the full IHP cap.

Excluding from IHP financial assistance those insured applicants with a net insurance settlement amount that is equal to or exceeds the IHP cap can pose a significant obstacle to them achieving a permanent housing solution, especially for homeowners. An ineligible insured homeowner whose home is underinsured may be unable to afford the unmet financial need to repair the home. An ineligible renter may also find it difficult to obtain a permanent housing solution when faced with the cost of underinsured losses for personal property. In Table 2 below, which assumes an IHP cap for housing assistance of $42,500, both Applicants A and B have the same unmet need for home repairs, but only Applicant B is eligible for IHP financial assistance for no other reason than that their net insurance settlement amount is less than the IHP cap.

[230] 67 FR 3412, Jan 23, 2002.

[231] Public Law 106–390, 114 Stat. 1552 (Oct. 30, 2000).

[232] *Id.*

[233] *Id.* FEMA noted in the 2002 NPRM that these caps were newly imposed via statute whereas FEMA had previously imposed caps administratively. 67 FR 3412, Jan 23, 2002. FEMA further noted that there appeared to be some ''confusion'' in the legislative history whether the $5,000 repair cap was also intended to encompass the costs for hazard mitigation measures and specifically requested comment on whether the cap might ''imprudently tie [FEMA's] hands'' in the implementation of the program. FEMA received comments agreeing that the cap was too limiting and stated it would seek legislative modifications. 67 FR 61446, Sept. 30, 2002.

[234] 42 U.S.C. 5155; Section 206 of DMA2K also addressed the duplication of benefits provision specifically as it related to repair assistance noting that FEMA should not require an individual to show that the assistance can be met through other means, ''except insurance proceeds.''

[235] 42 U.S.C. 5174(a)(1).

[236] Public Law 106–390, 114 Stat. 1552 (Oct. 30, 2000).

[237] Post-Katrina Emergency Management Reform Act of 2006, 109–295, 120 Stat. 1452 (Oct. 4, 2006) at Section 689d expanding IHP to authorize payments for security deposits and utilities; Section 689f authorizing transportation and case management services to individuals and households; and Section 689i authorizing a pilot program to repair multifamily rental housing for the purpose of temporarily housing disaster survivors.

[238] Specifically, DRRA: (1) removed temporary housing assistance from the calculation of the maximum amount of financial assistance available to applicants; (2) doubled the total amount of assistance available to applicants under the remainder of IHP by separating the maximum amount of financial assistance for HA and ONA from one cap to two equal, independent caps; and (3) removed the financial assistance maximum award limits for accessibility-related real and personal property items for applicants with disabilities. *See* Disaster Recovery Reform Act of 2018, Public Law 115–254, 132 Stat. 3448 (Oct. 5, 2018), 42 U.S.C. 5174(h).

Table 2—Insurance Proceeds

	Applicant A	Applicant B	Applicant C
FEMA Verified Loss	**$73,500**	**$73,500**	**$73,500**
Settlement Amount	$44,000	$32,000	$0
Deductible Amount	$1,000	$1,000	$0
Net Insurance Settlement	**$43,000**	**$31,000**	**$0**
Unmet Need	$30,500	$42,500	$73,500
IHP Eligibility Amount	**$0**	**$42,500**	**$42,500**

This potential inequity is compounded by the fact that the IHP cap for an eligible insured applicant is not reduced by the amount of their net insurance settlement. The end result is that, while Applicant A is not eligible for any IHP financial assistance (because their net insurance settlement amount exceeds the IHP cap), Applicant B is eligible for IHP assistance up to the full amount of the IHP cap. Furthermore, Applicant B is treated the same as Applicant C, an uninsured applicant; both applicants are eligible for IHP financial assistance to address their unmet need up to the full amount of the IHP cap. This further compounds the inequity for Applicant A, who had the most insurance protection.

FEMA's use of the IHP cap to limit eligibility for insured applicants creates challenges for disaster survivor recovery by limiting the ability of some applicants to achieve a permanent housing solution. Applicants that cannot fund the full repair costs of their homes are, notionally, more likely to remain in temporary housing for extended periods of time. Ultimately, by making these additional funds available to applicants under the IHP cap, the Agency may save funds currently used for financial or direct temporary housing of this population.

To help equitably address the unmet needs of insured applicants, and to more effectively assist them to achieve permanent housing solutions, FEMA considered the following options: (1) remove the IHP cap as a condition of eligibility for insured applicants; or (2) make the cost of the deductible eligible for insured applicants. Under the first option, FEMA would discontinue its application of the IHP cap against an applicant's net insurance settlement amount for the purpose of determining eligibility for IHP financial assistance. Instead, all insured applicants would be potentially eligible for IHP assistance irrespective of whether their net insurance settlement amount exceeds the IHP cap. The IHP cap would continue to limit the amount of IHP financial assistance that eligible applicants could receive to address their unmet need. During a 5-year period, only 0.4 percent of applicants with real-property insurance settlements were found to be ineligible for IHP assistance due to their net settlement amounts exceeding the IHP cap. Under this option, each of these ineligible applicants would have received approximately $24,000 in IHP financial assistance. Total costs to FEMA would have been approximately $398,000 ($365,000 in financial assistance and $33,000 for the cost of increased inspections). However, it may be the case that many potential applicants with net settlement insurance amounts greater than the IHP cap simply do not apply for IHP assistance. In that case, the total costs to FEMA could be significantly higher. Regardless, the impact to these applicants will be significant compared to uninsured IHP recipients and those with low levels of damage.

Under the second option, FEMA would authorize eligible applicants to receive IHP financial assistance to address the cost of their deductible, irrespective of their FEMA verified loss. Based on insurance documentation, FEMA could pay applicants for the amount of their deductible. In cases where the insured applicant does not feel they have an unmet need, no FEMA inspection would be required. Applicants with an unmet need would receive funds to address their unmet need, as determined by their FEMA verified loss, and their deductible. In many cases, FEMA provides a lower amount of IHP funds to repair elements of a home than an insurance company provides. Therefore, addressing applicants' unmet needs and deductibles could help insured applicants recover more quickly post-disaster. It could also incentivize applicants to choose higher dollar deductibles, which does not align with Agency goals to increase insurance coverage in the general population.

This option could be implemented individually or in conjunction with Option 1. While this option is easy to understand, in some cases, it may require FEMA to overpay applicants' unmet needs based on Table 3 below. Applicant D has no unmet need per FEMA's calculations, but will still receive payment for their deductible. Applicant E has an unmet need and receives payment for that need and the amount of their deductible.

Table 3—Insurance Proceeds

Proposal 2 Outcomes	Applicant D	Applicant E
FEMA Verified Loss	**$ 42,500**	**$ 47,500**
Settlement Amount	$ 47,500	$ 47,500
Deductible Amount	$ 5,000	$ 5,000
Net Insurance Settlement	**$ 42,500**	**$ 42,500**
Unmet Need	$ 0	$ 5,000
IHP Eligibility Amount	**$ 5,000**	**$ 10,000**

FEMA ultimately determined that removing the IHP cap as a condition of eligibility for insured applicants would be the most equitable in meeting the recovery needs of all applicants to assist them in recovering from the impacts of disasters by achieving permanent housing solutions more effectively. FEMA's post-DMA2K interpretation that the IHP cap should act as a condition of eligibility may have been reasonable given that the purpose of DMA2K was to control the costs of disaster assistance. However, the continued application of this policy position despite clear Congressional intent to increase assistance to individuals and households, and the inequitable treatment of applicants with varying levels of insurance coverage has led FEMA to reconsider. FEMA did not consider options that would provide less assistance to applicants than we already provide because it would contravene Congressional intent.

In addition to equity, FEMA's intent is to reduce the complexity of our program so that it is more straightforward and user-friendly to navigate for all disaster survivors. As such, it makes sense to remove an arbitrary test that is difficult to explain or defend and instead provide assistance, up to the cap, for the unmet need not covered by insurance. Although the second option might increase the amount of assistance that insured applicants receive, it will not remedy the implementation inequity in which applicants who have more insurance coverage may receive less assistance to address unmet needs. The selected option increases assistance for insured applicants and will not decrease assistance for any other category of applicants; as such, there are no reliance interests FEMA must consider in making the change.

2. SBA Loan Requirement

Through their authorizing statutes, both FEMA [239] and the SBA [240] may provide financial assistance to address personal property, transportation, and other necessary expenses resulting from a major disaster. FEMA provides this assistance through the ONA provision of the IHP and refers to these types of ONA collectively as ''SBA-dependent ONA.'' FEMA and the SBA coordinate on the delivery of SBA-dependent ONA to ensure compliance with two of FEMA's regulations: (1) 44 CFR 206.191 which sets forth a sequence of delivery to prevent a duplication of benefits with assistance received from another source; [241] and (2) 44 CFR 206.119(a)(1) through (3) which sets out the requirement that applicants apply and be declined for an SBA Disaster Home Loan before being considered for FEMA SBA-dependent ONA.[242]

When applying for FEMA assistance, applicants who indicate a need for SBA-dependent ONA are asked to provide their approximate annual household income and number of dependents. FEMA's NEMIS performs an automated comparison of the applicant's information to the SBA's minimum income table to determine whether the applicant could potentially qualify for an SBA loan to cover their SBA-dependent ONA need. Applicants whose income and number of dependents do not meet the SBA's minimum threshold are not referred to the SBA and are considered for FEMA SBA-dependent ONA. For internal tracking purposes, FEMA and the SBA categorize these applicants as Failed Income Test (FIT). FEMA does not take additional steps to verify FIT applicants' income or dependent information before awarding funds for verified SBA-dependent ONA expenses; these expenses may include Personal Property Assistance, Transportation Assistance, and Group Flood Insurance Policies.

Applicants whose income and dependent information meet the SBA's minimum income threshold are referred to the SBA to complete the loan application process. The SBA's loan application process consists of multiple steps at which the applicant's income, credit score, and debt-to-earnings ratio are assessed and, in certain cases, verified with the IRS and a private credit reporting agency. If at any point during the process the applicant is declined for a loan, the applicant is referred back to FEMA for consideration for SBA-dependent ONA.

The requirement to apply to the SBA for a loan before an applicant may be eligible for certain types of disaster assistance is a holdover regulatory requirement dating back to the implementation of the Disaster Relief Act of 1974 [243] before FEMA existed and when disaster assistance was administered by a component of HUD called the Federal Disaster Assistance Administration (FDAA). The Disaster Relief Act of 1974 authorized disaster assistance to individuals and households through two separate sections—one section addressed temporary housing and the other set up the Individual and Family Grant Program (IFG), which preceded the IHP.[244]

The IFG was a grant the FDAA could provide to States to administer to individuals and households, subject to national criteria, standards, and procedures established via regulation. The original implementing regulations did not include a requirement to apply to the SBA for a loan as a condition of eligibility before receipt of a grant under the IFG.[245] The FDAA first proposed a

[239] Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288 as amended, Section 408(e)(2), 42 U.S.C. 5174(e)(2).

[240] Section 9 of the Small Business Act, Public Law 93–24, 87 Stat. 25, (April 20, 1973), as amended, 15 U.S.C. 636 *et seq.*

[241] Prior to this IFR, 44 CFR 206.191, Duplication of benefits. See paragraph (c)(1) and (d)(2)(iii).

[242] Prior to this IFR, 44 CFR 206.119(a)(1)–(3).

[243] Public Law 93–288, 88 Stat. 143 (May 22, 1974).

[244] *Id* at Sections 404 and 408.

[245] 39 FR 28212, Aug. 5, 1974; 40 FR 23252, May 28, 1975. The implementing regulations did require that individuals or households applying to the State

loan requirement in 1977, but it was limited to ''farmers, ranchers, and persons engaged in aquaculture'' who were required to apply to the Farmers Home Administration (FmHA) and provide proof of the denial of such loan assistance before they were considered eligible for assistance under the IFG.[246] The FDAA revised the requirement in 1978 to add the SBA to reflect an agreement between FmHA and SBA in which the SBA would make housing or personal property loans in a disaster when farmers had suffered production and farm losses as well as housing and personal property losses.[247] The FDAA did not specifically provide a rationale for, or consider any alternatives to, this requirement.

In 1988, the President signed the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 [248] into law. FEMA [249] issued a rulemaking [250] to implement the changes in which it added new parts 206 and 207 to 44 CFR to govern assistance for disasters or emergencies declared on or after November 23, 1988. The section of the regulations governing the IFG was moved to 44 CFR 206.131. FEMA made reference in several parts of the IFG section to processes for applicants who were required to apply to the SBA or the FmHA before being eligible for IFG assistance,[251] but the regulation no longer identified who was subject to the requirement or maintained the specific identification of the population of applicants who were required to apply for a loan as ''farmers, ranchers, and persons who engaged in aquaculture.'' [252] Instead, FEMA was silent as to applicability. However, one section referred back to the general requirement in 44 CFR 206.131(d)(1)(i)(A) that an individual or family must apply for all applicable available governmental disaster assistance programs before being eligible for the IFG, beginning the current practice without explicitly determining that a loan from the SBA or FmHA constituted such ''applicable available governmental disaster assistance.'' At that time, FEMA also added 44 CFR 206.191 governing duplication of benefits and containing the first iteration of the sequence of delivery that is found in FEMA's current regulations listing disaster loans from the SBA and FmHA as required to be provided before the provision of assistance from the IFG.

In 2000, DMA2K [253] amended section 408 of the Stafford Act to combine the two sections authorizing temporary housing and the IFG into one section setting forth one program for individuals and households. DMA2K acknowledged FEMA's longstanding position related to SBA loans, specifically prohibiting FEMA from denying assistance to individuals for temporary housing, home replacement, or permanent housing construction solely because of the SBA loan requirement.[254] FEMA issued an NPRM [255] proposing regulations to establish the IHP to implement these amendments. At that time, FEMA introduced 44 CFR 206.119 which specifically requires that an applicant for IHP apply to the SBA for all available assistance under that program and either: (1) be declined for such assistance; or (2) demonstrate that the SBA assistance the applicant received failed to satisfy their disaster need before they are eligible for ONA.

Neither the FDAA nor FEMA ever provided a specific rationale for, or considered any alternatives to, the determination that applicants must apply to the SBA for loans and be denied or demonstrate the assistance provided fails to meet their needs as a condition of eligibility for ONA. It is clear from the rulemaking documents and the placement of the language related to SBA loans in 44 CFR 206.191 that FEMA views the types of assistance both it and the SBA may provide as potentially duplicative and therefore believes it is necessary to establish procedures to prevent such a duplication. However, there is no specific explanation in the rulemaking documents which sets forth why the FDAA and FEMA decided that loans from the FmHA or SBA had to precede the delivery of ONA assistance in the sequence of delivery. It may be that FEMA viewed the SBA as required to be first in the sequence of delivery because the Stafford Act requires FEMA to provide assistance to individuals under IHP if the individuals have necessary expenses and serious needs which they are ''unable to meet through other means'' [256] and the availability of an SBA loan could constitute those ''other means;'' however, that has never been explicitly stated as the rationale for the regulatory requirements.

In practice, the SBA requirement has created such a significant barrier to assistance that it has resulted in millions of potentially eligible applicants walking away from the disaster assistance process and therefore unable to address their necessary disaster expenses or serious needs. Based on data [257] from all declared disasters from the last 10 years, 3,887,049 applicants have been referred to the SBA and, of those applicants, 2,140,115 that could have received an SBA loan or been eligible but chose not to take the loan, did not receive SBA-dependent ONA awards (55 percent). During the last 10 years, the remaining 1,746,934 applicants received SBA-dependent ONA awards and, of those, approximately 364,334 were SBA denied, which is about 21 percent.

The GAO completed a review of the IHP in 2020 and described the challenges and barriers associated with the SBA loan requirement as a problem that requires a solution.[258] The GAO found that survivors may not complete the SBA loan application because they do not understand it is a requirement that governs eligibility for IHP.[259] Multiple officials from SLTTs and NGOs confirmed that survivors did not understand or were confused by the requirement to complete an SBA disaster loan application to qualify for some types of assistance from FEMA's IHP.[260] In addition to officials from SLTTs and NGOs, multiple FEMA staff members reported that survivors had challenges understanding the requirement to apply for an SBA loan and that the requirement has been a long-standing issue with the program.[261] The GAO states that the process creates an additional burden on disaster

for assistance under the program certify that they had sought assistance for any necessary expense or serious need through other available disaster assistance programs, and either been denied for such assistance or demonstrate it had not satisfied their need, as a condition of eligibility.

[246] 42 FR 5094, Jan. 27, 1977; On July 11, 1977, 42 FR 35643, 35644.

[247] On May 23, 1978, 43 FR 22029, 22030.

[248] Public Law 100–707, 102 Stat. 4689 (Nov. 23, 1988).

[249] FEMA was established effective April 1, 1979, and the regulations governing the disaster assistance programs administered by the FDAA were redesignated without change from 24 CFR Chapter XIII to 44 CFR Chapter I (44 FR 56172, Sept. 28, 1979). The language related to the FmHA and SBA loan requirement for ''farmers, ranchers, and persons engaged in aquaculture'' were moved to 44 CFR 205.48 without change or a rationale for, or consideration of any alternatives to, the loan requirement.

[250] 54 FR 11610, March 21, 1989.

[251] *Id.* at 44 CFR 206.131(d)(1)(iii)(D); 206.131(d)(4); 206.131(j)(1)(ii)).

[252] *Id.* at 44 CFR 206.131(d)(1)(iii)(D).

[253] Public Law 106–390, 114 Stat. 1552 (Oct. 30, 2000).

[254] *Id.* at Section 206; *see also* 42 U.S.C. 5174(a)(2).

[255] 67 FR 3412, Jan 23, 2002.

[256] 42 U.S.C. 5174(a).

[257] Data is for all declared disasters from January 1, 2010 through December 31, 2019.

[258] GAO–20–503, *Disaster Assistance: Additional Actions Needed to Strengthen FEMA's Individuals and Households Program* (September 30, 2020).

[259] *Id.* at 36.

[260] *Id.*

[261] *Id.*

survivors because survivors who do not have much experience in dealing with the Federal bureaucracy are required to interact with multiple Federal agencies and fill out multiple forms (many of which ask the same questions).[262] According to the GAO, the confusion and delays associated with this requirement may have created a barrier that prevented many potentially low-income IHP applicants with FEMA-verified personal property losses from being considered for personal property assistance.[263] The GAO recommended that the FEMA Administrator assess the extent to which its process for determining an applicant's eligibility for SBA-dependent ONA limits or prevents survivors' access to IHP assistance, and work with SBA to identify options to simplify and streamline the disaster assistance application process for survivors.

The GAO report accurately identified the requirement to apply for an SBA loan as a longstanding issue. FEMA was sued in the wake of Hurricane Katrina where plaintiffs alleged, among other claims, that FEMA had violated 42 U.S.C. 5174(a)(2) when it unlawfully denied applicants temporary housing assistance by inaccurately telling them they had to first apply to the SBA for a loan.[264] The Court found that while FEMA may not have actually denied disaster applicants for temporary housing as a result of their failure to apply to the SBA for a loan, it failed to properly communicate to individuals that the requirement only applied to the provision of certain types of ONA and that individuals could still receive temporary housing assistance even if they were seeking ONA and had not yet applied to the SBA. Plaintiffs alleged that the requirement, even if not applied to the denial of temporary housing assistance, was onerous and burdensome and caused extensive delays of necessary assistance. The Court found that a press release FEMA had issued to attempt to clear up the confusion only exacerbated it and issued a permanent injunction prohibiting FEMA from requiring applicants to complete an SBA loan application as a prerequisite for receipt of temporary housing assistance and from miscommunicating the nature of Federal assistance under the Stafford Act.

FEMA has attempted to remedy the confusion regarding the SBA requirement by explaining it in guidance documents, fact sheets, press releases, and videos.[265] The message is not simple: FEMA must communicate that some applicants may be referred to the SBA, that those applicants must complete an application for a loan if they are referred, that if the referred applicants do not apply, they may be denied for some assistance, but they only might be denied for ONA and *not* for temporary housing. It is not surprising that the confusion and barrier to assistance has persisted.

FEMA RFI commenters also identified the SBA loan requirement as an inequitable barrier to entry into the program. The commenters stated the process is unclear and places an unnecessary burden on applicants; creates a disproportionate barrier; and may, at best, lead to a delay or, at worst, cause a functional barrier in the registration process.[266] Specifically, the commenters stated that: (1) forcing people to apply for an SBA loan after the initial registration is a barrier and deterrent to applying for help, especially for members of senior citizen communities who do not want a loan and may be on a fixed income; for black disaster survivors who face their credit history being scrutinized without receiving tangible assistance; and for renters with low-incomes and for members of underserved communities, including people of color, who many times have a greater need than middle-income survivors; [267] (2) FEMA underassesses the needs of renters with low-incomes and members of underserved communities, including people of color, who seek to recover damaged personal property and vehicles by first requiring an application for an SBA loan, which causes delays in their application process; [268] and, (3) the SBA requirement burdens the applicant and paves the way for deeper poverty for survivors of natural disasters and the ease to extend debt solutions (*i.e.,* an SBA loan) to individuals greatly contrasts with the denial of assistance due to the lack of legal documentation or a means to fight unjust appeals.[269] A few commenters offered solutions to include that FEMA actively coordinate with the SBA to conduct pre-screening using SBA's established credit score and citizenship requirements before referring applicants to the SBA and that FEMA's staff receive training on SBA-related issues and be able to answer questions about any aspect of the SBA's process.[270] Another commenter argued that FEMA should automate the application and denial steps of the SBA process for individuals who already receive needs-based assistance such as food stamps, Supplemental Security Income, and Social Security Disability Income to allow the most vulnerable to receive assistance more quickly and with less complexity.[271]

Contrarily, the Department of Homeland Security's Office of Inspector General (DHS–OIG) criticized FEMA for not instituting enough controls over the SBA loan requirement process and recommended that FEMA collect and verify *more* documentation from disaster survivors, which would add more complexity to the process.[272] DHS–OIG asserted that by not taking additional steps to verify a FIT applicant's self-reported income and dependent information, FEMA made improper payments.

FEMA explored multiple options to improve its verification of self-reported income in response to DHS–OIG's concerns. FEMA first considered whether it could require applicants to submit more documentation to verify income. Examples of acceptable documentation would include the previous year's tax returns or pay-related documents from an applicant's employer. Applicants whose documentation indicated that their income and dependent information met the SBA's minimum threshold would be referred to the SBA for loan consideration.[273] However, creating an

[262] *Id.* at 40.

[263] *Id.* at 39.

[264] *McWaters* v. *FEMA,* 436 F. Supp. 2d 802 (E.D. La. 2006).

[265] See pages 7, 45, 141–142, 145–146, 149, 166, 173, IAPPG 1.1. Individual Assistance Program and Policy Guide | *FEMA.gov;* see also, *e.g.,* Fact Sheets | *FEMA.gov* in which search of term ''SBA'' produces 187 results as of May 4, 2023 covering data dating back to January 20, 2021 with some of the following representative fact sheets describing SBA requirement (Frequently Asked Questions About FEMA Disaster Assistance | *FEMA.gov;* FEMA Assistance Provides for Basic Needs | *FEMA.gov* Renters Can Apply for FEMA Assistance | *FEMA.gov;* Questions and Answers About Individual Assistance | *FEMA.gov*) see also, *e.g.,* representative video FEMA Accessible: Three Ways to Register for FEMA Disaster Assistance—YouTube; see also, *e.g.,* Press Releases | *FEMA.gov* in which search of term ''SBA'' produces 375 results as of May 4, 2023 covering data dating back to January 20, 2021 with some of the following representative fact sheets describing SBA requirement (SBA Helps Arkansas Businesses Impacted by Severe Storms and Tornadoes | *FEMA.gov;* Oklahoma Survivors in McClain and Pottawatomie Counties Can Apply for Possible FEMA Assistance | *FEMA.gov*).

[266] FEMA–2021–0011–0245, FEMA–2021–0011–0251, FEMA–2021–0011–0255, FEMA–2021–0011–0275, and FEMA–2021–0011–0277.

[267] FEMA–2021–0011–0277.

[268] FEMA–2021–0011–0277.

[269] FEMA–2021–0011–0306.

[270] FEMA–2021–0011–0255 and FEMA–2021–0011–0275.

[271] FEMA–2021–0011–0245.

[272] DHS–OIG *FEMA Has Paid Billions in Improper Payments in SBA Dependent Other Needs Assistance Since 2003,* OIG–20–60, page 1.

[273] As with each of the options FEMA evaluated, the SBA would need to update their application

additional administrative hurdle in the immediate aftermath of a disaster would greatly increase the applicant's post-disaster stress and strain FEMA's case-processing resources. FEMA continually attempts to minimize the forms of assistance that require documentation and manual review prior to award. Typically, most SBA-dependent ONA can be auto-processed by NEMIS post-inspection with no required staff interaction. Auto-processed awards can be received by applicants that select an electronic funds transfer within 24 hours of their inspection. Most applicants receive automated payments within 1 to 2 weeks of applying for assistance, while manual payments take a few months to be processed and received by applicants, especially in larger disasters. Increasing the manual workload would further increase the time and/or cost required to make manual payments.

FEMA could take steps to verify income for FIT applicants in coordination with external government partners. This involves certain legal challenges FEMA would have to overcome. The SBA has specific legislative authority, which FEMA does not have, to verify an applicant's income with the IRS as part of its loan application process. The IRS has indicated they could only pursue data sharing if there were specific statutory authority for it.[274] If FEMA overcame this legal hurdle, this option would appear to be less burdensome for the applicant, as FEMA would undertake the initial step of verifying the applicant's income and dependent information from the previous tax year; however it would still add some time and additional documentation requirements to the IHP registration process.

FEMA could purchase the services of a privately operated credit reporting company which can verify real-time employment and income data for an individual. This would require FEMA to make system changes to interface with the company's data and add this additional verification against the self-reported income. The service provided by the company may be able to provide an applicant's current income, but it is unclear if that would accurately portray the household's annual income. Variance in household income immediately after a disaster is very common and there are a multitude of reasons why an applicant's reported income immediately after a disaster would not exactly match what is reported by the private sector credit reporting company. This option would not have a significant impact on the timing of the applicant's assistance, unless the private sector credit reporting company returns a higher income than what the applicant self-reported, in which case, the applicant would have to apply to SBA.

FEMA also explored utilizing a credit check to determine which applicants should be referred to the SBA, rather than solely the FIT table. The SBA currently uses a credit check in the later stages of their loan application process and FEMA could mirror the credit score thresholds that the SBA has already developed to determine which applicants should be referred to SBA for further evaluation. FEMA would need to establish a contract with a third-party vendor that provides credit scores. Unlike the SBA, which utilizes detailed information from the credit report on the applicant's debts, FEMA would only need the credit score. As the credit check can be performed electronically and completed in real-time, it should not delay assistance to applicants. However, FEMA would need to inform applicants their credit may be checked when they apply for disaster assistance which could cause hesitation for some applicants to participate in the FEMA disaster assistance process and increase the barrier to assistance.

Ultimately, none of the options FEMA explored to further verify applicant information will eliminate the longstanding inequitable barrier to access to the IHP presented by the SBA loan requirement. The requirement causes delay and confusion. FEMA has attempted to communicate the requirement more clearly; however, the confusion surrounding it has persisted. The historically low percentage of applicants with SBA-dependent needs identified at inspection who choose to apply for and accept an SBA loan for these needs indicates a gap in the correct recovery process which this change would address. Removal of the requirement addresses FEMA's obligation under Executive Order 13985 and Executive Order 14091 to identify and address barriers to opportunities and benefits and aligns with the goal of the 2022–2026 FEMA Strategic Plan to instill equity as a foundation of emergency management by removing barriers to FEMA programs through a people first approach and achieving equitable outcomes for those we serve.[275] Removal of the requirement also aligns with certain of the comments received from the RFI and the conclusions reached by the GAO and will simplify applicant messaging for both FEMA and the SBA. Finally, removal of the requirement will allow applicants to receive the disaster assistance for which they have applied without being re-routed to fill out an SBA loan application first. Applicants will still have the option of applying for an SBA loan if the disaster assistance they receive does not meet their needs; as such, nothing is being taken away from disaster applicants and there are no reliance interests FEMA must consider in making the change.

3. Housing Assistance

Section 408 of the Stafford Act, 42 U.S.C. 5174, authorizes FEMA to provide housing assistance to applicants to respond to the disaster-related housing needs of individuals and households who are displaced from their predisaster primary residences or whose predisaster primary residences are rendered uninhabitable, or with respect to individuals with disabilities, rendered inaccessible or uninhabitable, as a result of damage caused by a major disaster. A subcategory of housing assistance is home repair assistance which FEMA may provide to repair disaster-damaged owner-occupied primary residences to a safe and sanitary living or functioning condition.

Prior to the changes in this IFR, 44 CFR 206.111 defined ''uninhabitable'' to mean the dwelling is not safe, sanitary or fit to occupy, but did not directly define ''habitable'' or ''fit to occupy.'' FEMA defined ''safe'' as secure from disaster-related hazards or threats to occupants. FEMA defined ''sanitary'' as free of disaster-related health hazards. FEMA defined ''functional'' as an item or home capable of being used for its intended purpose. In 44 CFR 206.117(b)(2)(ii), FEMA provided a list of components of the home for which it would provide repair assistance. In 44 CFR 206.117(b)(2)(i), FEMA provided that FEMA will repair each component

evaluation process to ensure these referred-based-on-verification applicants were not referred back to FEMA based solely on their self-reported income. The SBA also relies on self-reporting during the initial loan application process. The SBA uses this information to calculate an income/number of dependents to debt ratio and compares it to a minimum threshold. The SBA only verifies the income of those applicants that pass this initial threshold, which it accomplishes by coordinating with the IRS and reviewing applicants' credit score.

[274] See 26 U.S.C. 6103; IRS, Disclosure Laws (Oct. 5, 2022), *https://www.irs.gov/government-entities/federal-state-local-governments/disclosure-laws.*

[275] Strategic Goal 3.1 of the 2018–2022 FEMA Strategic Plan was to reduce the complexity of FEMA and to streamline the disaster survivor and grantee experience, which also would be furthered by these changes. The IFR also aligns with the 2022–2026 FEMA Strategic Plan, Goal 2: Lead whole of community in climate resilience; and Goal 3: Promote and sustain a ready FEMA and prepared Nation.

if it was functional immediately before the disaster, damaged by the disaster, not covered by insurance, and the repair of the component was necessary to ensure the safety or health of the occupant or to make the residence functional. Repairs were limited to restoration of the dwelling to a safe and sanitary living or functioning condition. Repair assistance would only be provided to the extent that the work makes the component functional. 44 CFR 206.117(b)(2)(iii). Components that were functional immediately before the declared event may have been eligible for repair assistance if the damage to the component was caused by the disaster and the component was no longer functional. 44 CFR 206.117(b)(2)(iv).

These regulations reflected FEMA's interpretation that the Stafford Act's requirement that housing assistance be provided for ''disaster-related'' needs prohibits FEMA from providing home repair assistance for pre-existing damage, which is where applicants have damage to their homes that occurred prior to the disaster and was not a result of the disaster or worsened by the disaster. FEMA has also referred to pre-existing damage as ''deferred maintenance.''

A version of the current language has been in place since 2002 when FEMA issued an NPRM [276] proposing regulations creating the IHP to implement amendments to the Stafford Act from DMA2K.[277] However, FEMA's 2002 version of the regulations governing home repair assistance was not explicit regarding FEMA's interpretation that the Stafford Act requires FEMA to identify and exclude pre-existing damage when calculating awards for home repair assistance.[278] In 2008, FEMA was sued by disaster survivors from Hurricane Dolly who were denied home repair assistance as a result of FEMA's deferred maintenance determinations.[279] The lawsuit alleged that FEMA's ''hidden and vague rules'' effectively prevented low-income families from accessing home repair assistance'' and ''institutionalize[d] economic discrimination.'' [280] The Court held that FEMA had violated the APA by failing to publish the deferred maintenance policy and forbade FEMA to use it to adversely affect Hurricane Dolly disaster applicants.[281]

In 2012, FEMA issued a Notice of Proposed Rulemaking (NPRM) [282] to clarify its interpretation of the statutory requirement that housing assistance under the Stafford Act be ''disaster-related'' by adding more specific limiting language to 44 CFR 206.117(b)(2) and explaining how it applied this interpretation to home repair assistance determinations. According to FEMA, the proposed text did not add new requirements; instead, it clarified the existing requirements.[283] FEMA stated that it historically interpreted the requirement that damage must be ''disaster-related'' as it applied to components of a home by breaking the evaluation into two parts: (1) the component must have been functional immediately before the event; [284] and (2) the component must have been damaged and made not functional by the event.[285] FEMA added new language noting that the repair assistance would be provided ''only to the extent that it makes the component functional,'' stating ''FEMA does not provide repairs or replacement to further improve a component beyond making it functional.'' [286] FEMA expanded on its general view of IHP by stating ''IHP is not a loss indemnification program and does not ensure that applicants are returned to their pre-disaster living conditions.'' [287]

These limitations have been a regular source of frustration for survivors and disaster recovery community members,[288] highlighting the gap between FEMA's regulations and the expectation of what disaster assistance should, or could, cover.[289] The limitations associated with pre-existing conditions means repair assistance has been limited to applicants with residences that incurred disaster damage but fall short of immediate safety and sanitation concerns without directly addressing or assessing the general livability issues. For example, certain components such as roofs may have sustained disaster damage but may also still leak from another area with pre-existing damage. Under its prior approach, FEMA would only pay to repair the disaster damage to the roof, not the pre-existing damage, which did not restore the home to a safe, sanitary living or functioning condition.

At the time FEMA made these determinations, it may have made sense to limit assistance under IHP; however, Congress has since indicated clear intent to increase the amount of assistance FEMA provides to individuals and households.[290] FEMA considered whether its approach could be altered to better address the needs of disaster survivors and to address livability issues. FEMA considered two options: (1) define ''fit to occupy'' in guidance ensure consideration of general livability conditions at the time of inspection that, if left unaddressed, could potentially impact the home's habitability later in the disaster or after inspection, and authorize replacement for components that could not be repaired when considering the overall condition of the component; or (2) amend the regulations to remove the requirement for real property components to be functional immediately prior to the disaster so that FEMA could repair a component that sustained disaster damage to a safe, sanitary, and functioning condition without attempting to determine whether the component had pre-existing damage.

[276] 67 FR 3412, Jan 23, 2002. The NPRM was implemented via an IFR. See 67 FR 61446, Sept. 30, 2002.

[277] Public Law 106–390, 114 Stat. 1552 (Oct. 30, 2000).

[278] 67 FR 3412, Jan 23, 2002 at proposed 44 CFR 206.108(b)(2) and 44 CFR 206.108(c)(1).

[279] *La Union del Pueblo Entero (Lupe)* v. *FEMA,* 2009 U.S. Dist. LEXIS 40368 (S.D. Tex., May 13, 2009).

[280] *Id.*

[281] *Id.*

[282] 77 FR 44562, July 30, 2012. The NPRM was implemented via a Final Rule. See 78 FR 66852, Nov. 7, 2013.

[283] *Id.*

[284] FEMA later expanded on this in the proposed rule to state that components did not need to be ''fully functional,'' nor was it ''disqualifying if the component posed a risk before the event.'' In FEMA's view the key was that the component must have had some functionality before the event and incurred a change in functionality (must become unfunctional) as a result of the event.

[285] *Id.*

[286] *Id.*

[287] *Id.*

[288] See *La Union del Pueblo Entero* v. *FEMA,* 2009 U.S. Dist. LEXIS 40368 (S.D. Tex., May 13, 2009); *Barbosa* v. *United States Dep't of Homeland Security,* 916 F.3d 1068, 1073 (D.C. Cir. 2019).

[289] FEMA guidance also previously interpreted the requirement that the damage be ''caused by the disaster'' to exclude assistance for secondary effects of the disaster (*e.g.,* mold, damage to subflooring, removing wet drywall to prevent water wicking further up and causing mold). FEMA's position was that mold is not a direct result of the disaster, rather a secondary effect caused by not removing, adequately drying out, or cleaning wet materials in the home, and thus not ''directly caused by the disaster.'' As such, FEMA only authorized a limited amount of assistance to remove damaged elements that might cause mold. However, FEMA's position on this was too narrow given that secondary effects would not occur but for the underlying disaster-caused damage. In 2021, FEMA reversed this policy position and authorized assistance to address secondary effects, such as mold. See page 9 of the Amendment to FP 104–009–03, Individual Assistance Program and Policy Guide, Version 1.1 memorandum cites to Chapter 3, Section IV.E. of the IAPPG 1.1, which is on pages 85–88 of IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

[290] *See* Public Law 106–390, 114 Stat. 1552 (Oct. 30, 2000); Post-Katrina Emergency Management Reform Act of 2006, 109–295, 120 Stat. 1452 (Oct. 4, 2006) Disaster Recovery Reform Act of 2018, Public Law 115–254, 132 Stat. 3448 (Oct. 5, 2018), 42 U.S.C. 5174(h) *supra,* at notes 242–244.

In the first option, FEMA considered putting forth a policy interpretation of what might make a residence ''unfit'' to occupy.[291] Unfit is defined in legal terms as ''unsuitable; or not adapted or qualified for a particular use or service.'' [292] In non-legal terms, unfit generally means ''not of the necessary quality or standard to meet a particular purpose;'' ''below the required standard;'' ''in poor condition;'' or ''not suitable; inappropriate.'' [293] FEMA could have defined ''fit to occupy'' in guidance to address unsanitary or poor conditions that made a disaster damage home unsuitable for occupancy associated with the disaster-related impacts to the general livability conditions of the home to increase clarity for FEMA housing inspectors and disaster survivors. FEMA also considered whether it could authorize replacement for disaster-damaged components that had pre-existing damage, but could not be partially repaired. However, this approach would not fully remove the subjectivity associated with making habitability and repair decisions and would potentially overcompensate disaster survivors to replace items with pre-existing damage that could be repaired to a safe, sanitary living or functioning condition.

In the second option, FEMA considered amending its regulations to remove the specific requirements related to pre-existing damage so that it could better address livability conditions. This required FEMA to re-visit its earlier interpretations of statutory authority. Although the Stafford Act uses the term disaster-related, it is not applied specifically to the subcategory of repair assistance; instead, it applies generally to the initial determination of whether to provide housing assistance at all.[294] FEMA may provide housing assistance to respond to the disaster-related needs of individuals who are displaced from their predisaster primary residences or whose predisaster residences are rendered uninhabitable as a result of damage caused by a major disaster. After FEMA determines that an applicant has cleared this initial hurdle, it determines the appropriate types of housing assistance to be provided to the applicant based on factors such as cost-effectiveness and convenience to the individual.[295] As it applies specifically to home repair assistance, the Stafford Act states that FEMA may provide financial assistance for the repair of dwellings that were damaged by a major disaster to a safe and sanitary living or functioning condition.[296] This does not require FEMA to discount pre-existing damage; FEMA could read the Act to mean that uninhabitable dwellings which sustained some disaster damage could be repaired ''to'' a safe and sanitary living condition. Simply, as FEMA has accomplished with this IFR, FEMA may provide assistance to repair a dwelling with a mix of disaster damage and pre-existing damage on a dwelling component to a safe and sanitary living condition. Finally, FEMA previously interpreted functioning to mean ''functional'' means and applied it in a component-by-component fashion FEMA could instead acknowledge that the Stafford Act uses the term ''functioning'' as one of the options for the desired end state of the dwelling by authorizing FEMA to provide assistance to repair a disaster-damaged dwelling to a safe and sanitary living ''or'' functioning condition.

This IFR's changes to the definitions of ''uninhabitable,'' ''safe,'' and ''sanitary,'' and the eligibility criteria for home repair assistance remove the regulatory limitations associated with pre-existing damage. Addressing this issue via amendment to the regulations more appropriately meets congressional intent that FEMA's assistance allows applicants to repair homes ''to'' a safe and sanitary living or functioning condition. Applicants will be in a better position to realistically recover from the disaster by receiving assistance to repair or replace real property components of the home that are not covered by insurance and are necessary to ensure the safety or health of the occupant. As a result, applicants will be less reliant on FEMA's other forms of housing assistance, such as temporary housing assistance, and will be able to return more quickly to a safe and functioning residence. This will expand assistance and address longstanding complaints that FEMA assistance does not adequately address survivor needs; as such, there are no reliance interests that FEMA considered in making these changes.

4. Serious Needs Assistance and Displacement Assistance

FEMA has the authority under Section 408(e)(2) of the Stafford Act, 42 U.S.C. 5174(e)(2), implemented as ONA at current 44 CFR 206.119(c)(6)(ii), which provides that FEMA in consultation with the State may provide financial assistance for ''necessary expenses or serious needs.'' FEMA has determined that the most pressing necessary expenses and serious needs generally occur during the immediate aftermath of disasters. Individuals and households displaced from their homes often need immediate assistance to be able to pay for short-term lodging or serious needs. In some instances, the immediate funds would be sufficient to address the short-term needs and the individuals may be able to return to their pre-disaster residences without additional support.

FEMA has established some short-term solutions for housing such as LER and initial rental assistance under its Stafford Act authority to provide temporary housing assistance at Section 408(c)(1)(A)(i), and it has offered expedited assistance for serious needs under its ONA authority at Section 408(e)(2) in the form of debit cards, or CNA. FEMA has, however, attached certain criteria to the eligibility for or expenditure of such assistance that has had the unintended consequence of impacting longer-term needs or resulting in the inequitable distribution of such benefits. FEMA provides LER via reimbursement for hotels, motels, or other short-term lodging while an applicant is displaced from his or her primary residence,[297] which requires disaster applicants to have up-front funding for such expenses. FEMA provides initial rental assistance to eligible applicants but will only recertify applicants for continued rent assistance if they can submit rent receipts to show that they have exhausted the FEMA rent funds on rent.[298] FEMA's statutory authority to provide temporary housing assistance requires that the financial assistance be used to rent ''alternate housing accommodations, existing rental units, manufactured housing, recreational vehicles or other readily fabricated dwellings;'' [299] as such, the requirements FEMA has placed upon applicants to prove that such assistance is, in fact, used for rent is a reasonable interpretation of the statute.

[291] As noted above, in regulation, FEMA defined ''uninhabitable'' to mean the dwelling is not safe, sanitary or fit to occupy, but did not define ''fit to occupy.'' FEMA defined ''safe'' as secure from disaster-related hazards or threats to occupants. FEMA defined ''sanitary'' as free of disaster-related health hazards.

[292] Black's Law Dictionary (4th pocket ed. 2011); *see also* Barron's Legal Guides Law Dictionary (2nd ed. 1984).

[293] Webster's Collegiate Dictionary (11th ed. 2003); Collins English Dictionary—Complete and Unabridged (12th ed. 2014); and American Heritage Dictionary of the English Language (5th ed. 2016).

[294] 42 U.S.C. 5174(b)(1).

[295] 42 U.S.C. 5174(b)(2)(A).

[296] 42 U.S.C. 5174(c)(2)(A)(i).

[297] See page 44 IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

[298] 44 CFR 206.114(b)(2).

[299] 42 U.S.C. 5174(c)(1)(A)(i).

However, FEMA's previous interpretation has produced inequities in disaster events; FEMA has been sued by disaster applicants alleging that FEMA provided them with initial rental assistance without clearly explaining the purpose of the funds and, when applicants spent the funds on other necessities, FEMA denied them for continued temporary housing assistance because they could not produce receipts verifying the funds were spent on rent.[300] While FEMA has continued to communicate the appropriate uses of initial rental assistance, the problem remains that disaster applicants have post-disaster serious needs aside from housing for which they need assistance.

FEMA determined it could improve upon and expand its existing authority by establishing two new types of assistance to address immediate unmet needs under the IHP's ONA provision: Serious Needs Assistance and Displacement Assistance. Serious Needs Assistance and Displacement Assistance would both be subject to the ONA cost share and available for every disaster in which IHP is authorized. Applicants will have to meet all standard IHP eligibility criteria under 44 CFR 206.113. FEMA will not require receipts documenting the use of the funds for either form of assistance. Serious Needs Assistance will take the place of CNA, and, in this improved version, FEMA may provide funds to eligible survivors to assist with the additional costs they incur due to being impacted or displaced by a disaster (including evacuation). Survivors would be able to use the funds for immediate or serious needs such as water, food, first aid, infant formula, diapers, personal hygiene items, or fuel for transportation. These needs will vary according to each applicant and FEMA will not require receipts documenting the use of this assistance. Serious Needs Assistance will be available for every disaster in which IHP is authorized instead of only being available in specific geographic areas upon the request of STT government.[301] FEMA examined its past practice in providing similar payments and considered setting the assistance amount at the current amount provided for CNA ($500) or increasing it to $750 or $1000. At this time, FEMA believes increasing the amount to $750[302] would better cover immediate post-disaster serious needs based upon our prior experience with CNA.

FEMA is establishing Displacement Assistance to provide funds for short-term living arrangements based on a timeframe established by FEMA and a nightly room rate approved in the State Administrative Option as required in § 206.120(b). Displacement Assistance will be available for eligible survivors whose homes are uninhabitable to assist them with securing temporary lodging while they make repairs or pursue temporary housing. Applicants who receive Displacement Assistance can still request and receive Initial Rental Assistance when they are ready to move into temporary housing; however, FEMA created this assistance to fill a gap for disaster survivors who may not need long-term rental assistance.

FEMA considered two options for limiting Serious Needs Assistance and Displacement Assistance. FEMA considered: (1) limiting the population who could receive Serious Needs Assistance to only those applicants who had been displaced by a disaster or who reported a need for shelter as a result of the disaster; or (2) limiting the geographic area that might be eligible for Serious Needs Assistance to only those areas with certain impacts. The first option would not meet the needs of disaster applicants who have immediate, unmet needs that are not caused by displacement. For example, if there are widespread power outages in an area that did not cause an applicant to be displaced, but might have caused refrigerated food or medicine to expire, an applicant might need immediate assistance to replace those necessary items. The second option would potentially delay the disbursement of Serious Needs Assistance beyond the initial disaster period to allow FEMA to gather information about the geographic impacts of the disaster. FEMA often does not have the detailed information necessary about the impacts of a disaster in its immediate aftermath to make such geographic determinations. Such a delay would frustrate the intent to provide immediate assistance and may compound the effects of unmet serious needs.

There are multiple benefits to improving FEMA's implementation of these types of immediate needs assistance. Lower-income groups and minorities suffer disproportionately from disaster and recover less quickly than more privileged residents. Natural disasters can compound existing inequities and act as tipping points, consuming savings, and pushing households into financial and economic insecurity. According to the Federal Reserve, 32 percent of Americans could not cover an emergency expense of $400 with cash or its equivalent, with 11 percent saying they would be unable to pay the expense by any means.[303] FEMA's establishment of Serious Needs Assistance and Displacement Assistance will allow eligible disaster applicants to apply for and quickly receive an initial tranche of each form of assistance to help with the immediate serious needs and necessary expenses after a disaster. Disaster applicants will have more flexibility to choose the form of short-term lodging that best suits their needs, to include staying with friends and family and offsetting their expenses, which should decrease shelter usage. Displacement assistance is a more equitable and efficient way of providing short-term lodging assistance than LER,[304] which is an administratively burdensome reimbursement action that benefits those who have the means to pay their hotel bills up front, rather than those applicants who do not have such funds available. FEMA hopes to address the need many disaster survivors have for short-term transitional assistance, when there is no need for longer-term rental assistance. The changes align with the 2022–2026 FEMA Strategic Goal 1 to instill equity as a foundation of emergency management by removing barriers to FEMA programs through a people first approach and achieving equitable outcomes for those we serve.[305] The changes also support IA

[300] *Ridgley* v. *Fed. Emergency Mgmt. Agency,* 2007 U.S. Dist. LEXIS 43002 (E.D. La., June 13, 2007).

[301] Prior to this IFR, FEMA only provided CNA for a limited number of disasters and only in specific geographic areas when the STT government submits a written request, with justification, within 14 days from the date of the disaster declaration. See page 164 IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.* The STT government must demonstrate that applicants are displaced due to restrictions placed by STT government officials; shelters in the area do not meet the needs of the displaced population; and community and life-sustaining services within a reasonable distance are limited due to disaster-caused impact. Id.

[302] FEMA will adjust the amount of SNA to reflect changes in the CPI for all Urban Consumers that the Department of Labor publishes annually. 44 CFR 206.119(b)(1).

[303] Federal Reserve Board, Report on the Economic Well-Being of U.S. Households 2021, Figures 19 and 20, *https://www.federalreserve.gov/publications/2022-economic-well-being-of-us-households-in-2021-dealing-with-unexpected-expenses.htm https://www.federalreserve.gov/publications/2022-economic-well-being-of-us-households-in-2021-dealing-with-unexpected-expenses.htm https://www.federalreserve.gov/publications/2022-economic-well-being-of-us-households-in-2021-dealing-with-unexpected-expenses.htm.*

[304] FEMA in this IFR states that Displacement Assistance is in lieu of LER and only those displaced applicants who do not receive Displacement Assistance may receive LER.

[305] Strategic Goal 3.1 of the 2018–2022 FEMA Strategic Plan, to streamline the disaster survivor and grantee experience, also would be furthered by these changes. The IFR also aligns with the 2022–2026 FEMA Strategic Plan, Goal 2: Lead whole of community in climate resilience; and Goal 3:

Strategic Plan Objective 1.1 to prioritize and evolve service delivery, and IA Strategic Plan Objective 1.3 to enhance program delivery. These changes will expand assistance and address complaints that FEMA assistance does not adequately address immediate, unmet applicant needs; as such, there are no disaster applicant reliance interests that FEMA considered in making these changes. STTs cannot allege a reliance interest associated with future benefits they might request in a discretionary disaster grant program.

IV. Discussion of the Interim Final Rule

A. Section 206.101—Temporary Housing Assistance for Emergencies and Major Disasters Declared on or Before October 14, 2002

On September 30, 2002, FEMA issued regulations on the then-new Individuals and Households Program.[306] The rule implemented DMA2K [307] and added §§ 206.110–120 to subpart D of part 206 of FEMA's regulations.[308] The previous regulations, relating to the superseded Individual and Family Grant Program, were retained in § 206.101, but revised to apply only to disasters declared before October 15, 2002, the applicability date of the new Individuals and Households Program regulations.[309] Since these old regulations are now outdated and no longer necessary, FEMA removes and reserves § 206.101. Sections 206.102 through 206.109 are currently reserved, so removing and reserving § 206.101 will extend the existing reservation to §§ 206.101–109.

B. Section 206.110—Federal Assistance to Individuals and Households

In the first sentence of § 206.110(a), FEMA states that this section implements the policy and procedures set forth in the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (Stafford Act), 42 U.S.C. 5174. This is consistent with the first sentence of current § 206.110(a), except for FEMA removing ''section 408 of;'' adding ''as amended (Stafford Act)'' for clarity; and removing ''as amended by the Disaster Mitigation Act of 2000'' for clarity. FEMA makes these edits for public ease of reference, as a United States Code cite is more accessible to the public and referencing the section of the Stafford Act only increases the length of the regulation. Plus, there have been many amendments to the Stafford Act since DMA2K. Instead of including all of the amendments to the Stafford Act, FEMA removes the reference to DMA2K and uses ''as amended.''

In the first sentence of § 206.110(b), FEMA states that no individual or household will receive financial assistance greater than $25,000 under subpart D with respect to a single major disaster or emergency for the repair or replacement of their pre-disaster primary residence. This is consistent with the first sentence of current § 206.110(b), except for FEMA adding the phrase ''for the repair or replacement of their pre-disaster primary residence'' to codify section 1212 of the DRRA which amended 408(h) of the Stafford Act, 42 U.S.C. 5174, to remove Temporary Housing Assistance from any financial maximum retroactive to disasters declared on or after August 1, 2017. Thereby, financial assistance for temporary housing expenses are no longer limited to a maximum award amount. Financial assistance for home repair and replacement for owner-occupied homes is still limited to a maximum award amount.

FEMA adds a new second sentence to § 206.110(b), FEMA states that no individual or household will receive financial assistance greater than $25,000 under subpart D with respect to a single major disaster or emergency for Other Needs Assistance. FEMA adds this new language for clarity since section 1212 of the DRRA amended 408(h) of the Stafford Act, 42 U.S.C. 5174, by separating ONA, so ONA and Home Repair Assistance/Home Replacement Assistance have equal, independent financial maximums retroactive to disasters declared on or after August 1, 2017.

In the third sentence (currently the second sentence) of § 206.110(b), FEMA states that FEMA will adjust the $25,000 limits annually to reflect changes in the Consumer Price Index (CPI) for All Urban Consumers that the Department of Labor publishes. This is consistent with the current second sentence of § 206.110(b), except for FEMA replacing ''limit'' with ''limits'' for grammar purposes, since there are multiple $25,000 limits that FEMA adjusts annually.

FEMA adds a new paragraph (b)(1) to § 206.110 stating that the maximum amount of financial assistance excludes rental assistance under § 206.117(b)(1)(i) and lodging expense reimbursement under § 206.117(b)(1)(i). FEMA adds this new language for clarity; as, Rental Assistance and Lodging Expense Reimbursement are not counted toward the financial housing assistance maximum award.

FEMA adds a new paragraph (b)(2) to § 206.110 stating that the maximum amount of financial assistance excludes expenses to repair or replace eligible damaged accessibility-related real property improvements and personal property for individuals with disabilities. FEMA adds this new language for clarity since section 1212 of the DRRA removed financial assistance maximum award limits for accessibility-related real and personal property items for applicants with disabilities. IAPPG 1.1 references specific disaster-damaged accessibility real property items that can be paid in addition to the financial assistance maximum award amount for Housing Assistance (Chapter 3: IV.E. Home Repair Assistance).[310] Also, IAPPG 1.1 currently references specific disaster-damaged accessibility personal property items that can be paid in addition to the financial assistance maximum award amount for ONA (Chapter 3: VI.A.*1.* Amount of Assistance.) [311]

In the second sentence of § 206.110(c), FEMA states that FEMA will determine the appropriate types of housing assistance to be provided under § 206.110 based on considerations of cost effectiveness, convenience to the individuals and households and the suitability and availability of the types of assistance. This is consistent with the current second sentence of § 206.110(c), except for FEMA revising ''shall'' to ''will'' for purposes of plain language.

In the fourth sentence of § 206.110(c), FEMA states that temporary housing and repair assistance must be utilized to the fullest extent practicable before other types of housing assistance. This is consistent with the current fourth sentence of § 206.110(c), except for FEMA revising ''shall'' to ''must'' for purposes of plain language.

In § 206.110(d), FEMA states that eligibility for Federal assistance under subpart D is limited to losses or expenses resulting from damage that occurred during the dates of the incident period established in a presidential declaration that a major disaster or emergency exists, except that reasonable lodging expenses that are incurred in anticipation of and immediately preceding such event may be eligible for Federal assistance under

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[306] 67 FR 61446, Sept 30, 2002.

[307] Public Law 106–390, 114 Stat. 1552 (Oct. 30, 2000).

[308] See 67 FR 61446, 61452.

[309] See *Id.* at 61460.

[310] See page 86 IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

[311] See page 146 IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

Chapter I. This is consistent with current § 206.110(d), except for FEMA replacing ''will begin on'' with ''is limited to losses or expenses resulting from damage that occurred during the dates'' and replacing ''that results'' with ''period established'' for clarity. With these edits FEMA is trying to identify that the damage must have occurred in the incident period, not necessarily all the losses or expenses.

In the second sentence of § 206.110(e), FEMA states that the Assistant Administrator for the Recovery Directorate may extend the period of assistance if he/she determines that due to extraordinary circumstances an extension would be in the public interest. This is consistent with current second sentence § 206.110(e), except for FEMA's technical edit of replacing ''Disaster Assistance'' with ''Recovery,'' as it represents a past FEMA organization change and replacing ''this period'' with ''the period of assistance'' to align with the paragraph heading (e), *period of assistance.*

In the first sentence of § 206.110(h), FEMA states that in accordance with the requirements of the Stafford Act, 42 U.S.C. 5155, FEMA will not provide assistance under subpart D when any other source has already provided such assistance or when such assistance is available from any other source. This is consistent with the first sentence of current § 206.110(h), except for FEMA removing ''section 312 of'' since referencing the section of the Stafford Act just increases the length of the regulation.

FEMA removes current § 206.110(h)(2), which states ''applicable benefits are exhausted,'' as it is unnecessary, since an applicant does not have to exhaust benefits as a condition for FEMA to provide assistance to insured applicants under subpart D. FEMA's current regulations assume this is necessary to prevent a duplication of benefits, but FEMA will only be providing assistance for items or repairs that are not covered or adequately addressed by the applicant's insurance, so it should not be necessary for them to exhaust their insurance benefits before they receive IA.

FEMA is not providing applicants all of the money they need for their recovery. The eligibility factor regulations at § 206.113(a)(5) already ensure that applicants accept all assistance from other sources for which they are eligible and that they accept all assistance from their insurance, if they have any.

Section 206.110(h)(2) is consistent with current § 206.110(h)(3), except for the change to the paragraph structure.

In § 206.110(h)(3), FEMA states that, among other exceptions to the principle that FEMA will not provide assistance when assistance is available from any other source, FEMA may provide assistance to insured applicants when applicants cannot use their insurance because there is no housing on the private market. This is consistent with current § 206.110(h)(4), except FEMA replaced ''housing is not available'' with ''applicants cannot use their insurance because there is no housing'' for clarity.

In § 206.110(i)(1), FEMA states that except as provided in § 206.110(i)(2), the Federal share of eligible costs paid under subpart D is 100 percent. This is consistent with current § 206.110(i)(1), except for FEMA replacing ''shall be'' with ''is'' for purposes of plain language.

In § 206.110(i)(2) through the first sentence of § 206.110(i)(2)(ii), FEMA states that Federal and State cost shares for ''Other Needs'' assistance under the Stafford Act, 42 U.S.C. 5174(e) and (f), are as follows: the Federal share is 75 percent; and the non-Federal share is 25 percent and must be paid from funds made available by the State. This is consistent with the current § 206.110(i)(2) through the first sentence of § 206.110(i)(2)(ii), except for FEMA removing ''subsections 408 (e) and (f) of'' and adding ''42 U.S.C. 5174(e) and (f),'' for public accessibility; replacing ''will be'' with ''are,'' ''shall be'' with ''is,'' and ''replacing ''shall'' with ''must'' for purposes of plain language; and adding ''is 25 percent and'' after ''non-Federal share'' for clarity.

In the second sentence of § 206.110(i)(2)(ii), FEMA states that if the State does not provide the non-Federal share to FEMA before FEMA begins to provide assistance to individuals and households under the Stafford Act, 42 U.S.C. 5174(e), FEMA will still process applications. This is consistent with the second sentence in current § 206.110(i)(2)(ii), except for FEMA removing ''subsection 408(e) of'' and adding ''42 U.S.C. 5174(e),'' for ease of reference, as a United States Code cite is more accessible to the public and referencing the section of the Stafford Act just increases the length of the regulation.

In the fourth sentence of § 206.110(i)(2)(ii), FEMA states that if the State does not provide such reimbursement on a monthly basis, then FEMA will issue a billing notice to the State on a monthly basis for the duration of the program. This is consistent with the fourth sentence of current § 206.110(i)(2)(ii), except for FEMA replacing ''Bill for Collection'' with ''billing notice'' for clarity. The United States Treasury Department (Treasury) tends to use the term ''billing notices'' when referring to these documents,[312] so FEMA is adopting that term here to avoid confusion.

In the fifth sentence of § 206.110(i)(2)(ii), FEMA states that FEMA will charge interest, penalties, and administrative costs on delinquent billing notices in accordance with the Debt Collection Improvement Act. This is consistent with the fifth sentence of current § 206.110(i)(2)(ii), except for FEMA replacing ''administrative fees'' with ''administrative costs'' and replacing ''Bills for Collection'' with ''billing notices'' for clarity. Treasury uses the terms ''costs'' and ''administrative costs'' instead of ''fees'' and ''administrative fees'' in the debt collection context,[313] so FEMA is adopting that terminology here to avoid confusion.

In the sixth sentence of § 206.110(i)(2)(ii), FEMA states that cost shared funds, interest, penalties and administrative costs owed to FEMA through delinquent billing notices may be offset from other FEMA disaster assistance programs (*i.e.,* Public Assistance) from which the State is receiving assistance, or future grant awards from FEMA or other Federal Agencies. This is consistent with the sixth sentence in current § 206.110(i)(2)(ii), except for FEMA replacing ''fees'' with ''administrative costs,'' replacing ''Bills for Collections'' with ''billing notices,'' and adding ''assistance'' after ''receiving'' for clarity.

In § 206.110(j)(2), FEMA states that under the Stafford Act, 42 U.S.C. 5174(f)(2), FEMA must share applicant information with States in order for the States to make available any additional State and local disaster assistance to individuals and households. This is consistent with current § 206.110(j)(2), except for FEMA removing ''section 408(f)(2) of'' since referencing the section of the Stafford Act only increases the length of the regulation.

In § 206.110(j)(2)(ii), FEMA states that States receiving such applicant information must not further disclose the information to other entities, and must not use it for purposes other than providing additional State or local disaster assistance to individuals and households. This is consistent with current § 206.110(j)(2)(ii), except for FEMA replacing ''must'' with ''shall'' in

[312] See, *e.g.,* Treasury Dept., Managing Federal Receivables, Chapter 6: Delinquent Debt Transparency, at 6–4 (March 2015), *https://fiscal.treasury.gov/files/dms/chapter6.pdf.*

[313] See, *e.g., Id.* at 6–15; 31 U.S.C. 3717(e)(1); and 31 CFR 901.9(c).

two places in the sentence for purposes of plain language.

In the first sentence of § 206.110(k)(2), FEMA states that individuals or households that are located in a special flood hazard area may not receive Federal Assistance for National Flood Insurance Program (NFIP)—insurable real and/or personal property, damaged by a flood, unless the community in which the property is located is participating in the NFIP (See 44 CFR 59.1), or the exception in 42 U.S.C. 4105(d) applies. This is consistent with the first sentence in current § 206.110(k)(2), except for FEMA replacing ''(*See* 44 CFR part 59.1)'' with ''(See 44 CFR 59.1)'' as a technical correction since the cross cite is a section and not a part.

In the first sentence of § 206.110(k)(3)(i), FEMA states that as a condition of the assistance and in order to receive any Federal assistance for future flood damage to any insurable property, individuals and households named by FEMA as eligible recipients under the Stafford Act, 42 U.S.C. 5174, who receive assistance, due to flood damage, for acquisition or construction purposes under subpart D must buy and maintain flood insurance, as required in 42 U.S.C. 4012a, for at least the assistance amount. This is consistent with the current first sentence of § 206.110(k)(3)(i), except for FEMA removing ''section 408 of'' to decrease the length of the regulations; adding ''42 U.S.C. 5174'' for accessibility; and revising ''damages'' to ''damage'' for grammar purposes.

In the first sentence of § 206.110(k)(3)(i)(A), FEMA states that if the applicant is a homeowner, flood insurance coverage must be maintained at the address of the flood-damaged property for as long as there is a residential building (See 44 CFR 59.1) at the address. This is consistent with the current first sentence of § 206.110(k)(3)(i)(A), except for FEMA adding ''there is a residential building (See 44 CFR 59.1) at'' before ''the address'' and removing ''exists'' for clarity. An address does not ''exist.'' Rather, the language, for as long as there is a residential building at the address, is more precise.

In § 206.110(m), FEMA states that assistance provided under subpart D generally does not have the potential to affect historic properties and thus FEMA has no further obligations under the National Historic Preservation Act, 54 U.S.C. 306108, with the exception of ground disturbing activities and construction related to §§ 206.117(b)(1)(ii) (direct housing), 206.117(b)(2)(ii)(F) (repair assistance for privately owned roads and bridges), 206.117(b)(3) (replacement assistance), and 206.117(b)(4) (permanent housing construction.) This is consistent with current § 206.110(m), except for FEMA replacing ''is exempted from review in accordance with section 106 of'' with ''FEMA has no further obligations under'' for clarity and since referencing the section of the National Historic Preservation Act only increases the length of the regulation; adding ''54 U.S.C. 306108'' for ease of reference; replacing ''Temporary'' with ''direct,'' adding ''206.117(b)(2)(ii)(F) (repair assistance for privately owned roads and bridges),'' and replacing ''Replacement housing'' with ''replacement assistance'' for clarity; and replacing ''Permanent housing construction'' with ''permanent housing construction'' to align with section formatting.

With regard to the changes in § 206.110(m), the National Historic Preservation Act, 54 U.S.C. 306108, states that the head of any Federal agency having direct or indirect jurisdiction over a proposed Federal undertaking or federally assisted undertaking in any State, prior to the approval of the expenditure, shall take into account the effect of the undertaking on any historic property. If the undertaking is a type of activity that does not have the potential to cause effects on historic properties, assuming such historic properties were present, the agency official has no further obligations under Section 106 of the National Historic Preservation Act. Based on over 20 years of practice, since § 206.110(m) was published, FEMA has determined that the proposed undertaking, excluding the stated exceptions, does not have the potential to cause effects on historic properties. Therefore, FEMA changes the language in § 206.110(m) to align it with the applicable statutory and regulatory language (*i.e.,* 36 CFR 800.3(a)(1)).

In § 206.110(n), FEMA adds a new paragraph heading of ''Severability'' for consistency with standards established by the **Federal Register**. FEMA is adding new paragraph § 206.110(n) stating any provision of subpart D held to be invalid or unenforceable as applied to any person or circumstance should be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision of subpart D is invalid and unenforceable in all circumstances, in which event the provision should be severable from the remainder of subpart D and should not affect the remainder thereof.

A severability clause is a standard legal provision. It indicates FEMA's intent that if a court finds that a specific provision of a rule is unlawful, the court should allow the remainder of the rule to survive. Those provisions that are unaffected by a legal ruling can be implemented by an agency without requiring a new round of rulemaking simply to promulgate provisions that are not subject to a court ruling.

FEMA is publishing this IFR to amend its regulations governing the Individual Assistance program to increase equity by simplifying processes, removing barriers to entry, and increasing eligibility for certain types of assistance under the program. Specifically, the IFR increases eligibility for home repair assistance by amending the definitions and application of the terms safe, sanitary, and functional, allowing assistance for certain accessibility-related items, and amending its approach to evaluating insurance proceeds; allows for the re-opening of the applicant registration period when the President adds new counties to the major disaster declaration; simplifies the documentation requirements for continued temporary housing assistance; simplifies the appeals process; simplifies the process to request approval for a late registration; removes the requirement to apply for a Small Business Administration loan as a condition of eligibility for ONA; and establishes additional eligible assistance under ONA for serious needs, displacement, disaster-damaged computing devices and essential tools for self-employed individuals. FEMA also makes revisions to reflect changes to statutory authority that have not yet been implemented in regulation, to include provisions for utility and security deposit payments, lease and repair of multifamily rental housing, child care assistance, maximum assistance limits, and waiver authority.

FEMA believes that its authority to implement each of these provisions is well-supported in law and practice and should be upheld in any legal challenge. FEMA also believes that its exercise of its authority reflects sound policy. However, in the event that any portion of the interim final rule is declared invalid, FEMA intends that the various provisions be severable. The provisions are not so interconnected that the rule's efficacy depends on every one of them remaining in place—implementation of the different provisions is sufficiently distinct that FEMA's aim of increasing equity and easing entry to the IA Program would still be furthered by

maintaining the other provisions. For example, if a court were to find unlawful the changes to insurance proceeds, the remaining provisions of the interim final rule, such as those on CTHA and security deposit payments, could still function sensibly and FEMA would still intend them to stand.

C. Section 206.111—Definitions

In § 206.111, FEMA adds terms for ''Destroyed,'' ''Essential tools,'' ''Recertification,'' ''Repairs,'' and ''State'' and to revise the definitions of ''Alternative housing resources,'' ''Dependent,'' ''Displaced applicant,'' ''Eligible hazard mitigation measures,'' ''Fair market rent,'' ''Financial ability,'' ''Functioning,'' ''Housing costs,'' ''Manufactured housing sites,'' ''Owner-occupied,'' ''Permanent housing plan,'' ''Reasonable commuting distance,'' ''Safe,'' ''Sanitary,'' ''Serious need,'' and ''Uninhabitable.''

Alternative housing resources. FEMA revises the term ''Alternative housing resources'' to mean any housing that is available or can quickly be made available in lieu of permanent housing construction and is cost-effective when compared to permanent construction costs. Some examples are rental resources, manufactured housing units, and travel trailers. This is consistent with the current definition of ''Alternative housing resources'' except for FEMA replacing ''mobile homes'' with ''manufactured housing units,'' after ''rental resources.'' FEMA makes these changes to align with HUD's regulations and FEMA has moved away from the term ''mobile home'' generally, except when referring to a pre-disaster mobile home that an applicant may have occupied and to add an Oxford comma to the list of examples for grammar purposes.

Dependent. FEMA revises the term ''Dependent'' to mean someone who is normally claimed as such on the Federal tax return of another, according to the Internal Revenue Code. It may also mean the minor children of a couple not living together, where the children live in the affected residence with the parent or guardian who does not claim them on the tax return. This is consistent with the current definition of ''Dependent,'' except for FEMA removing ''actually'' before ''claim'' for clarity.

Destroyed. FEMA defines the term ''Destroyed'' to mean the primary residence is a total loss or damaged to such an extent that repairs are infeasible. IAPPG 1.1 at Chapter 3: IV.G.*1.* considers a residence destroyed when: disaster-caused damage necessitates the replacement of the majority of two or more major structural components (*e.g.,* basement walls/foundation, load-bearing walls, or roof assembly have collapsed); the disaster has completely removed the above-grade structure and only the foundation remains; flood waters have reached the roof, inundating the majority of the structure's living area; the dwelling is in imminent threat of collapse because of disaster-caused damages; in the case of mobile homes and or travel trailers, when the frame is visibly bent or twisted and releveling is not possible; or repair is not feasible, and replacement is necessary to ensure the safety or health of the occupant or make the residence functional.[314] FEMA knows that the IAPPG 1.1 definition is too long for a regulatory definition, so FEMA drafted the more succinct definition of ''destroyed.''

Displaced applicant. FEMA revises the term ''Displaced applicant'' to mean one whose disaster-damaged primary residence is uninhabitable, inaccessible, or made unavailable by the landlord. This is consistent with the current definition of the term ''Displaced applicant,'' except for FEMA adding ''disaster damaged'' before ''primary residence'' for clarity as the Stafford Act requires the home to be rendered ''uninhabitable'' by disaster damage; adding ''or'' before the clause ''made unavailable by the landlord'' for clarity; and removing the clauses ''(to meet their disaster housing need)'' and ''or not functional as a direct result of the disaster and has no other housing available in the area, *i.e.,* a secondary home or vacation home.'' The removal of the clauses have two different reasons. FEMA's definition of ''Uninhabitable'' (not safe, sanitary or fit to occupy) does not mention functioning or functional as a factor for determining whether the home is uninhabitable. The Stafford Act makes ''functioning condition'' a part of the habitability standard for repair assistance. Specifically, repairs must restore the home to a safe, sanitary or functioning condition. There is no requirement for the home to be not functioning; only that the home be owner-occupied as the primary residence before the disaster and rendered uninhabitable by the disaster damage. Secondly, since the ineligibility factors are included in § 206.113, it seems unnecessary and repetitive to include the additional explanatory information of ''*i.e.,* a secondary home or vacation home'' in the definition of displaced applicant.

Eligible hazard mitigation measures. FEMA revises the term ''Eligible hazard mitigation measures'' to mean home improvements that an applicant can accomplish in order to reduce or prevent future disaster damage to the primary residence, utilities, or infrastructure. This is consistent with the current definition of ''Eligible hazard mitigation measures,'' except for FEMA replacing the phrase ''essential components of the home'' with ''the primary residence, utilities, or infrastructure'' for clarity. FEMA does not have a definition for the phrase ''essential components of the home,'' but § 206.117(b)(2)(ii)(H) currently refers to ''eligible hazard mitigation measures'' and includes the clarifying words ''that reduce the likelihood of future damage to the residence, utilities, or infrastructure.'' FEMA is replacing the undefined phrase in § 206.111, with the phrase that FEMA has been using in § 206.117(b)(2)(ii)(H), ''the residence, utilities, or infrastructure,'' with the small revision of adding ''primary'' before ''residence'' as ''primary residence'' is the defined term in the IHP regulations.

Essential tools. FEMA defines the term ''Essential tools'' to mean tools and equipment required for employment and items required for education. This definition of ''Essential tools'' is consistent with the current definition of *Essential tools* in Chapter 3: VI.C.*1.* of IAPPG 1.1 except that it replaces the phrases ''required by an employer as a condition of'' and ''required as a condition of an applicant's or household member's'' with ''required for'' so that it parallels the ONA regulatory text at §§ 206.119(b)(6)(iv) and 206.119(b)(6)(v) for consistency.[315]

Fair market rent. FEMA revises the term ''Fair market rent'' to mean estimates of rent plus the cost of utilities, except telephone, identified by the Department of Housing and Urban Development as being adequate for existing rental housing in a particular geographic area. This is consistent with the current definition of *fair market rent,* except for FEMA removing the following part of the current first sentence of the definition: ''housing market wide estimates of rents that provide opportunities to rent standard quality housing throughout the geographic area in which rental housing units are in competition'' for simplicity and removing the following phrase from the beginning of the current second sentence of the definition, ''the fair

[314] See page 91 IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

[315] See page 167 IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

market'' for simplicity; adding the phrase ''estimates of rent plus the cost of utilities, except telephone'' to more closely mirror HUD's definition of FMR and adding ''geographic'' before ''area'' for clarity.

Financial ability. Currently, FEMA's definition of ''Financial ability'' only applies to the requirement that applicants whose incomes were impacted by the disaster can afford to pay 30 percent of their income toward housing. Applicants whose income was not impacted are expected to be able to pay the dollar amount they paid pre-disaster. When computing financial ability, extreme or unusual financial circumstances may be considered by the RA. FEMA has been applying the concept that all applicants requesting Continued Temporary Housing Assistance have the financial ability to pay up to 30 percent of their income toward housing to all applicants requesting CTHA since 2002, to treat applicants consistently.

FEMA revises the term ''Financial ability'' to mean the applicant's capability to pay 30 percent of gross post-disaster household income for housing. When computing financial ability, extreme or unusual financial circumstances may be considered by FEMA. This is consistent with the current definition of the term ''Financial ability,'' except for FEMA moving the clause ''30 percent of gross post-disaster income for housing'' to earlier in the definition, replacing ''the Regional Administrator'' with ''FEMA'' to ensure continued consistency in processing across disasters at the national level when computing ''Financial ability'' in extreme or unusual financial circumstances, and removing the second and third sentences of the current definition.

Functioning. FEMA revises the term from ''Functional'' to ''Functioning'' for clarity and FEMA states that the definition remains the same. *Functioning* means an item or home capable of being used for its intended purpose.

Housing costs. FEMA revises the term ''Housing costs'' to mean rent and mortgage payments, including principal, interest, real estate taxes, real property insurance, homeowners or condominium association fees, and utility costs. This is consistent with the current definition of the term ''Housing costs,'' except for FEMA adding ''homeowners or condominium association fees'' to codify the current practice.

Manufactured housing sites. FEMA revises the term ''Manufactured housing sites'' to mean those sites used for the placement of travel trailers and other manufactured housing units, including:

(1) *Commercial site,* a site customarily leased for a fee, which is fully equipped to accommodate a housing unit;

(2) *Private site,* a site that the applicant provides or obtains at no cost to the Federal Government, complete with utilities; and

(3) *Group site,* a site provided by the State or local government or FEMA, if determined that such site would be more economical or accessible than one that the State or local government provides, that accommodates two or more units and is complete with utilities.

This is consistent with the current definition of the term ''Manufactured housing sites,'' except for FEMA removing the phrase ''government or privately owned mobile homes'' for clarity and deleting the comma after ''travel trailers'' for grammar purposes. FEMA deletes ''government or privately owned'' as there is not something other than government or privately owned. FEMA deletes ''mobile homes'' to align with HUD's regulations and as FEMA has moved away from the term ''mobile home'' generally, except when referring to a pre-disaster mobile home that an applicant may have occupied.

Also, the above definition is consistent with the current definition of the subterm ''Group site,'' except for FEMA adding ''or FEMA, if determined that such site would be more economical or accessible than one that the State or local government provides'' before ''that'' for clarity and consistency. Currently, § 206.117(b)(1)(ii)(E)*(4)* covers a group site provided by FEMA and it includes the language that ''such a site would be more economical or accessible than one that the State or local government provides,'' so for consistency FEMA adds the limitations of when FEMA will provide a group site to the revisions to the definition.

Owner-occupied. FEMA revises the term ''Owner-occupied'' to mean that the residence is occupied by:

(1) The legal owner with verifiable documentation; or

(2) A person who does not hold formal title to the residence and pays no rent, but can produce verifiable documentation demonstrative of legal responsibility including tax payment receipts; receipts for major repairs, maintenance, or improvements of the residence; court documents, a letter from a public official, or, for mobile home or travel trailer owners residing in a commercial park, a letter from the mobile home park owner or manager; or

(3) A person who has verifiable documentation of lifetime occupancy rights with formal title vested in another.

This is consistent with the current term ''Owner-occupied,'' except for FEMA adding ''with verifiable documentation; or'' after ''legal owner'' in paragraph (1) for clarity and to avoid being overly limiting; adding ''verifiable documentation of'' before ''lifetime'' in paragraph (3) for clarity; and replacing ''is responsible for the payment of taxes or maintenance of the residence'' with ''can produce verifiable documentation demonstrative of legal responsibility including tax payment receipts; receipts for major repairs, maintenance, or improvements of the residence; court documents, a letter from a public official, or, for mobile home or travel trailer owners residing in a commercial park, a letter from the mobile home park owner or manager'' in subparagraph (2) for clarity. FEMA has already implemented all of the proposed changes to the definition of the term ''Owner-occupied'' via the September 2, 2021, *Amendment to FEMA Policy (FP) 104–009–03, Individual Assistance Program and Policy Guide (IAPPG), Version 1.1* memorandum; therefore, FEMA is only codifying existing practice in our revisions to this term.

Permanent housing plan. FEMA revises the term ''Permanent housing plan'' to mean a realistic plan that, within a reasonable timeframe, puts the displaced applicant back into permanent housing that is similar to their pre-disaster housing situation. A reasonable timeframe includes sufficient time within the period of assistance for securing funds and services to repair the home, completing repairs or locating a permanent dwelling, and moving into the dwelling. This is consistent with the current definition of the term ''Permanent housing plan,'' except for FEMA replacing ''disaster victim'' with ''displaced applicant'' and replacing ''the victim's'' with ''their'' for consistency and adding the phrase ''within the period of assistance,'' the clause ''and services to repair the home,'' and the clause ''completing repairs or'' for clarity.

Reasonable commuting distance. FEMA revises the term ''Reasonable commuting distance'' to mean a distance that does not place undue hardship [316] on an applicant. It also

[316] The following are the types of circumstances that FEMA would consider as an ''undue hardship.'' FEMA takes into consideration the travel time involved due to road conditions and disaster-related impacts to commuting patterns in the area. For example, during the Oso mudslides,

Continued

takes into consideration the traveling time involved due to road conditions, *e.g.,* mountainous regions or road closures and the normal commuting patterns of the area. This is consistent with the current definition of ''Reasonable commuting distance,'' except for FEMA replacing ''bridges out'' with ''road closures'' for grammar purposes; as, ''bridges out'' is not grammatically correct.

Recertification. FEMA defines the term ''Recertification'' to mean the process that FEMA uses to evaluate an applicant's eligibility for continued temporary housing assistance under § 206.114. Currently, the recertification process is discussed in various places in the IAPPG.[317] FEMA describes recertification as when FEMA re-evaluates the occupant's eligibility on a periodic basis, and the eligibility for the entire period of assistance is subject to the occupant continuing to meet recertification requirements. FEMA defines the term ''Recertification'' in the IFR for clarity.

Repairs. FEMA defines the term ''Repairs'' to mean repairs of a quality necessary for a safe and sanitary living or functioning condition. This is a new definition that FEMA aligns with the Stafford Act language at 42 U.S.C. 5174 and is consistent with the edits FEMA made in the below repair section.

Safe. FEMA revises the term ''Safe'' to mean secure from hazards or threats to occupants. This is consistent with the current definition of the term ''safe,'' except for FEMA removing ''disaster-related'' from the definition.

Sanitary. FEMA revises the term ''Sanitary'' to mean free of health hazards. This is consistent with the current definition of the term ''sanitary,'' except for FEMA removing ''disaster-related'' from the definition.

Under FEMA's current regulations, if an applicant's primary residence had existing health hazards prior to a disaster, the applicant would not be eligible for assistance to repair those hazards. The changes to the definitions of ''safe'' and of ''sanitary'' allow FEMA to provide assistance for repairing those hazards. For example, under the changes, if an applicant's primary residence had a leaky roof prior to a disaster, that leak will be eligible for repair as long as the primary residence incurred some disaster damage and repair or replacement of the roof was required to make the home sanitary. This is consistent with 42 U.S.C. 5174 and will help FEMA provide disaster assistance in a more fair and equitable manner.

Serious need. FEMA revises the term ''Serious need'' to mean the requirement for an item, or service, that is necessary to an applicant's ability to prevent, mitigate, or overcome a disaster-related hardship, injury or adverse condition. This is consistent with the current definition of the term ''Serious need,'' except for FEMA replacing ''essential'' with ''necessary'' for consistency with the Stafford Act at 42 U.S.C. 5174. The current regulation uses ''essential,'' which is defined as ''absolutely necessary,'' so that is something more than necessary. With this change, FEMA is aligning with the statutory language more closely, especially where ''necessary'' can be interpreted as less of a bar for applicants to reach than ''essential.''

State. FEMA defines the term ''State'' to mean for the purposes of subpart D and where consistent with the requirements of the Stafford Act, any State as defined in § 206.2(a)(22) [318] or ''Indian tribal government'' as defined in the Stafford Act (42 U.S.C. 5122(6)). FEMA adds the defined term ''State'' which includes Tribes for clarity.

Uninhabitable. FEMA revises the term ''Uninhabitable'' to mean the dwelling is not safe or sanitary. This is consistent with the current definition of ''Uninhabitable,'' except for FEMA adding ''or'' before ''sanitary'' and removing ''or fit to occupy,'' since the Stafford Act at 42 U.S.C. 5174 does not define uninhabitable but only uses safe and sanitary as a habitability standard.

D. Section 206.112—Registration Period

In the first sentence of § 206.112(b), FEMA states that FEMA may extend the registration period when the State requests more time to collect registrations from the affected population. This is consistent with the first sentence of current § 206.112(b), except for FEMA replacing ''the regional administrator or his/her designee'' with ''FEMA'' to ensure continued consistency in processing across disasters at the national level.

In the second sentence of § 206.112(b), FEMA states that FEMA may also extend the standard registration period when necessary to establish the same registration deadline for contiguous counties or States. This is consistent with the second sentence of current § 206.112(b), except for FEMA replacing ''the Regional Administrator or his/her designee'' with ''FEMA'' to ensure continued consistency in processing across disasters at the national level.

In § 206.112(c), FEMA adds a new paragraph heading of ''Reopening of the registration period'' for consistency with standards established by the **Federal Register**. FEMA adds a new paragraph 206.112(c) which states that after the registration period for the major disaster or emergency has expired, FEMA may reopen the registration period for 60 days only when the President's declaration is amended to include additional counties and only for the additional counties. The intent is to limit a reopened registration period to 60 days and just for the areas included in the add-on after the registration period already ended.

In the second sentence of § 206.112(d), FEMA states that we will process late registrations for those registrants who explain the reason for the delay in their registration. This is consistent with the second sentence of current § 206.112(c), except for FEMA replacing ''provide suitable documentation to support and justify'' with ''explain'' as requiring documentation places a burden on applicants to produce the documents and can slow the provision of assistance to applicants. It is also generally accepted that underserved populations are most likely to struggle with producing suitable documentation.

FEMA's current policy [319] states that applicants who apply late must submit a letter that explains the extenuating circumstances that prevented them from applying for assistance in a timely manner and signed by the applicant or person who the applicant authorizes to act on their behalf. The letter should also include documentation justifying the extenuating circumstances. The documentation provided must be dated immediately prior to or within the FEMA registration period. Acceptable documentation may include:

- Record of hospitalization, illness, or disability of the applicant or an immediate family member;
- Record of death for an immediate family member; or

a main thoroughfare was destroyed due to the disaster and the only alternative for residents was to take a mountainous road that increased applicants commute time by 2 hours. Similar situations have also occurred in Hawaii due to lava-flow, where entire roadways were impassible and severely impacted the community.

[317] See pages 98, 99, and 103 of IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

[318] *State:* Any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

[319] Page 71 of the Individual Assistance Program and Policy Guide, version 1.1 (Individual Assistance Program and Policy Guide (IAPPG) (*fema.gov*) discusses late applications and the types of acceptable information FEMA requires in order for the late application to be considered.

• Proof of personal or business travel that kept the applicant out of the area for the full application period.

Additionally, FEMA received the following comment in response to the RFI:

> The barriers for an applicant to access FEMA assistance should be as minimal as possible. To that end, [the commenter] requests that Congress accept any and all applications received during the thirty-day grace period after the deadline has passed. Currently, CFR requirements state that an applicant must provide ''suitable documentation'' to justify the late application. There are myriads of valid reasons why applicants may be late to apply and forcing them to justify why their particular reason should count is inappropriate and unnecessary.[320]

In the past 10 years, FEMA has approved 51 percent of the late applications received. In many disasters, the disaster staff worked closely with survivors who submitted late applications to explain the necessary documentation and help gather it from the applicant. Simplifying the process for applicants will also allow this staff more time to support other elements of disaster recovery and applicants with other ineligibility reasons.

The language surrounding ''suitable documentation'' has been in FEMA's regulations since the IHP regulations went into effect in 2002. Generally, requiring documentation has been a means for FEMA to validate that there is a disaster-related need. However, any applicants approved for further consideration based on their late application status still have to meet all the eligibility requirements required of applicants who applied during the application period (*i.e.,* occupancy and ownership, citizenship, and identity verification, assistance eligibility criteria, etc.). Ultimately, survivors who apply during the late application period will only receive funds if they have disaster-caused damages or losses.

This change ultimately benefits applicants and lowers the documentation burden for receiving eligibility consideration for IHP assistance for any disaster survivor who registers during the late application period, while also providing FEMA the ability to ensure there is a disaster-related reason for the late application. There are no expected negative impacts for disaster survivors in making this change.

FEMA has also decided to accept more reasons from applicants for late applications. These include:

• Incarceration;
• Victim of human trafficking;
• On-going domestic situations where persons in the same household posed an immediate threat to other family members, resulting in a separation of the family unit; or
• Major life events that occurred during the initial registration period (*e.g.,* birth or adoption of a child, foster care placement, marriage, gender transition, transition of a family member into or out of a residential or mental health care facility) that led to a late application.

FEMA considered the following policy alternatives: making no change; updating the language to no longer require suitable documentation; or removing the requirement for applicants to justify their late application at all. Making no change maintains a substantial applicant burden that slows the provision of assistance and likely impacts underserved populations disproportionately. While the current documentation requirement impacts a relatively small population's eligibility, it ultimately denies access to any form of FEMA IHP assistance if the applicant cannot provide documentation justifying the reason for their late application. Removing the requirement for any justification, verbal or otherwise, essentially removes any difference between the standard application period and the late application period which are identified as separate and distinct time periods.

E. Section 206.113—Eligibility Factors

In the first sentence of § 206.113(a), FEMA states that in general, FEMA may provide assistance to individuals and households who qualify for such assistance under the Stafford Act, 42 U.S.C. 5174, and subpart D. This is consistent with the first sentence of current § 206.113(a), except for FEMA removing ''section 408 of'' and adding ''42 U.S.C. 5174'' after ''the Stafford Act,'' for clarity and public ease of reference.

In § 206.113(a)(1), FEMA states that FEMA may only provide assistance when the individual or household has incurred a disaster-related necessary expense and serious need in the State in which the disaster has been declared, without regard to their residency in that State. This is consistent with current § 206.113(a)(1), except for FEMA replacing ''or'' with ''and'' before ''serious need,'' as a codification of a current existing policy and practice since FEMA has always allowed applicants to receive assistance for both a necessary expense and a serious need without regard to their residency in that State and FEMA capitalizing ''State'' in § 206.113(a)(1), when used as a noun.

FEMA removes the current sentence at § 206.113(a)(4), which states that an eligibility factor under which FEMA may provide assistance is in a situation where the applicant has insurance, when the insured individual or household's insurance proceeds are less than the maximum amount of assistance FEMA can authorize and the proceeds are insufficient to cover the necessary expenses or serious needs. FEMA removes current § 206.113(a)(4), as an applicant may only receive assistance for real or personal property through the IHP when their insurance proceeds are less than the FEMA Verified Loss (FVL) and the applicable HA or ONA maximum. Per 42 U.S.C. 5174, FEMA can assist underinsured applicants, but the current regulations limit the assistance to applicants who receive less than $42,500 in real or personal property from their insurance company. FEMA identified the need to update FEMA's current regulations to allow for more equity in the IHP when FEMA determines the unmet needs of applicants by comparing their net insurance settlements to the FVL. For the reasons described earlier, the IFR limits the requirement to compare insurance proceeds to the financial HA or ONA maximum.

In § 206.113(a)(4), FEMA states that an eligibility factor under which FEMA may provide assistance is in a situation where the applicant has insurance, but the applicant cannot use their insurance because housing is not available on the private market. In § 206.113(a)(4), FEMA is consistent with current § 206.113(a)(5), except for FEMA adding ''but the applicant cannot use their insurance'' after ''insurance,'' and replacing ''when'' with ''because'' for clarity. FEMA is incorporating this clarifying language to apply to applicants who have insurance but are unable to use their Additional Living Expenses or Loss of Use coverage, as there is no housing available on the private market.

In § 206.113(a)(5), FEMA states that an eligibility factor under which FEMA may provide assistance is in a situation where the applicant has insurance, when the insured individual or household has accepted all assistance from other sources for which he, she, or they are eligible, including insurance, and that assistance and insurance is insufficient to cover the necessary expense and serious need. In § 206.113(a)(5), FEMA is consistent with current § 206.113(a)(6), except for FEMA replacing the phrase ''when the insured individual or household's insurance

[320] FEMA–2021–0011–0149.

proceeds and all other assistance are less than the maximum amount of assistance FEMA can authorize and the proceeds'' with the phrase ''and that assistance and insurance is'' before ''insufficient'' to allow for more equity and to more fully address the unmet needs of applicants, replacing ''or'' with ''and'' before ''serious'' for clarity, and replacing ''needs'' with ''need'' for grammar purposes. We note that the changes from ''or'' to ''and'' has no practical effect. Section 408(a)(1) of the Stafford Act, 42 U.S.C. 5174, uses ''and'' for overarching eligibility criteria, but Section 408(e) of the Stafford Act, 42 U.S.C. 5174 uses ''or'' to describe eligibility criteria for ONA. FEMA used the word ''or'' in the current regulations to avoid being overly limiting; however, current § 206.111 defines ''necessary expense'' to be, essentially, whatever it costs to fix a ''serious need.'' This means that although the regulations use ''or,'' FEMA always treated the phrase as an ''and.''

Section 206.113(a)(6) is consistent with current § 206.113(a)(7), except for the changes to the paragraph structure. Section 206.113(a)(7) is consistent with current § 206.113(a)(8), except for the changes to the paragraph structure and the removal of ''and'' at the end of the paragraph. Section 206.113(a)(8) is consistent with current § 206.113(a)(9), except for the changes to the paragraph structure and the addition of ''; and'' at the end of the paragraph to allow for a new paragraph § 206.113(a)(9).

In new § 206.113(a)(9), FEMA states that FEMA may provide assistance with respect to home repair for accessibility-related items, if an applicant meets the following conditions: (i) the applicant is either an individual with a disability as defined in 42 U.S.C. 5122 whose disability existed prior to the disaster and whose primary residence was damaged by the disaster, or an individual with a disability as defined in 42 U.S.C. 5122 whose disability was caused by the disaster and whose primary residence was damaged by the disaster; (ii) the real property component is necessary to meet the accessibility-related need of the household; and (iii) the real property component is not covered by insurance or any other source.

In response to public comments, FEMA has also changed the regulatory text at § 206.117(b)(2) and a new § 206.113(a)(9) as a part of this IFR. The changes will allow FEMA flexibility to provide financial assistance to applicants for the installation or construction of real property items that were not present in the home prior to the disaster. Specifically, these changes allow IHP to expand its existing policy,[321] which provides for the installation of ADA related real property to applicants with disaster-caused needs, to include Home Repair Assistance for disaster survivors with pre-existing, pre-disaster needs for accessibility-related items, such as an exterior ramp, grab bars, etc., that make their home safe and functional when any level of disaster-caused real property damage occurs to the primary residence.

Not only does the new regulatory text at § 206.113(a)(9) list the home repair for accessibility-related items eligibility factors, but it also clarifies that FEMA uses the term an ''individual with a disability'' as defined in section 102(7) of the Stafford Act, 42 U.S.C. 5122. Unfortunately, section 102(7) of the Stafford Act is outdated and states that the term ''individual with a disability'' means an individual with a disability as defined in Section 3(2) of the Americans with the Disabilities Act of 1990 (42 U.S.C. 12102(2)). The ADA was amended in 2008 and the definition of disability was moved from subparagraph (2) to subparagraph (1). Congress has not amended the Stafford Act to reflect this change; therefore, FEMA is interpreting the language in section 102(7) of the Stafford Act, 42 U.S.C. 5122, to mean that FEMA should use the ADA definition of disability with respect to an individual at 42 U.S.C. 12102(1).

If FEMA did not interpret section 102(7) of the Stafford Act, 42 U.S.C. 5122, to mean that the term ''individual with a disability'' means an individual with a disability as defined in the ADA at current 42 U.S.C. 12102(1) and instead relied on the ADA cross-reference that is currently listed in the Stafford Act, 42 U.S.C. 12102(2), then FEMA will define ''individual with a disability'' based on the ADA definition of the term ''major life activities'' which is illogical. FEMA assumes that Congress will amend the Stafford Act to cross-reference to the correct paragraph of the ADA.

Via information collection 1660–0002, we are adding a documentation requirement to tie the need for the home repair accessibility-related items: ramp, grab bars, and/or paved pathway to the pre-existing disability to meet the household's access and functional need. We are requiring that a medical, health care, or rehabilitation professional certify whether or not this is necessary; as, they have the expertise to make that determination or we will accept prior medical, health care, or rehabilitation professional documentation that supports the need for the accessibility-related items.

FEMA is making changes to Home Repair Assistance to adjudicate four RFI comments,[322] so that FEMA may make the dwelling safe/sanitary for pre-disaster disabled applicants. For example, this change will allow FEMA to reimburse pre-disaster disabled applicants for accessibility items, such as grab bars and access ramps, if the primary residence sustained disaster damage regardless of whether or not the applicant had grab bars or access ramps pre-disaster.

In § 206.117(b)(2)(i), FEMA states that FEMA may provide financial assistance for the repair of an owner-occupied primary residence if: the eligibility criteria in § 206.113 are met; FEMA determines the dwelling was damaged by the disaster; and the damage is not covered by insurance. This sentence is consistent with the current § 206.117(b)(2)(i), except for FEMA removing the phrase ''real property components in'' before ''an owner-occupied primary residence;'' adding ''FEMA determines'' after ''met;'' removing ''to the component'' after ''damage'' and replacing ''component'' with ''dwelling,'' as the Stafford Act does not limit repairs to ''components'' and replacing ''owner's'' with ''owner-occupied'' for consistency as *owner-occupied* is the defined term in § 206.111; removing the current § 206.117(b)(2)(i)(B) that ''the component was functional immediately before the declared event'' and removing current § 206.117(b)(2)(i)(E) that ''the repair of the component is necessary to ensure the safety or health of the occupant or to make the residence functional,'' and removing the clause ''and the damage was caused,'' since FEMA is paying for pre-existing conditions if the component itself was damaged by the disaster.

In § 206.117(b)(2)(ii), FEMA states that FEMA may provide financial assistance for the repair of the disaster damaged dwelling to a safe and sanitary living or functioning condition. This clause is consistent with the current § 206.117(b)(2)(ii), except for FEMA adding ''the disaster damaged dwelling to a safe and sanitary living or functioning condition including'' after ''of.'' These additions align with the changes that make it clear that only

[321] September 2, 2021, Amendment to FEMA Policy (FP) 104–009–03, Individual Assistance Program and Policy Guide (IAPPG), Version 1.1 memorandum.

[322] FEMA–2021–0011–0152, FEMA–2021–0011–0164, FEMA–2021–0011–0235, and FEMA–2021–0011–0261.

disaster damaged dwellings (regardless of their pre-disaster condition) may receive repair assistance, as FEMA may only pay to restore disaster damage to a safe and sanitary living or functioning condition. If the dwelling was not touched by the disaster, it will not be eligible for repair assistance; therefore, the applicant will not be able to apply for Home Repair Assistance for their pre-existing, pre-disaster needs for accessibility-related items, such as an exterior ramp, grab bars, etc., that make their home safe and functional.

In § 206.113(b)(1), FEMA states that FEMA may not provide assistance under subpart D for housing or displacement assistance, to individuals or households who are displaced from other than their pre-disaster primary residence. This is consistent with the current § 206.113(b)(1), except for FEMA adding ''or displacement'' before ''assistance'' for clarity, since we added displacement assistance to the ONA regulations in § 206.119(b)(2).

In § 206.113(b)(2), FEMA states that FEMA may not provide assistance under subpart D for temporary housing or displacement assistance, to individuals or households who have adequate rent-free housing accommodations. This is consistent with the current § 206.113(b)(2), except for FEMA adding ''temporary'' before ''housing'' and adding ''or displacement'' before ''assistance'' for clarity. FEMA may provide assistance to repair an applicant's home, but FEMA will not provide the applicant with rental assistance or direct housing assistance, while the applicant's repairs are made because the applicant has somewhere else they can temporarily live.

In § 206.113(b)(3), FEMA states that FEMA may not provide assistance under subpart D for temporary housing or displacement assistance, to individuals or households who own a secondary or vacation residence within reasonable commuting distance to the disaster area, or who own available rental property that meets their temporary housing needs. This is consistent with the current § 206.113(b)(3), except for FEMA adding ''temporary'' before ''housing'' and adding ''or displacement'' before ''assistance'' for clarity. See the explanation in the above discussion of § 206.113(b)(2).

In § 206.113(b)(4), FEMA states that FEMA may not provide assistance under subpart D for temporary housing or displacement assistance to individuals or households who evacuated the residence in response to official warnings solely as a precautionary measure and are able to return to and safely occupy the residence immediately after the incident. This is consistent with the current § 206.113(b)(4), except for FEMA adding ''temporary'' before ''housing'' adding ''or displacement'' before ''assistance,'' see the explanation in the above discussion of § 206.113(b)(2), removing ''who'' before ''are,'' and adding ''and safely occupy'' before ''the residence immediately after the incident'' for clarity and equity. This is intended to apply to applicants that did not receive damage that impacted habitability and can safely return and live in their home immediately. However, lodging expense reimbursement is available to individuals or households who evacuated the residence in response to official warnings solely as a precautionary measure and did not receive temporary housing or displacement assistance. See § 206.110(d).

In § 206.113(b)(5), FEMA states that FEMA may not provide assistance under subpart D for housing assistance, for improvements or additions to the pre-disaster condition of property, except for the following: (i) improvements or additions required to make repairs that comply with local and State ordinances; (ii) eligible hazard mitigation measures; or (iii) accessibility-related items for individuals with disabilities, consistent with § 206.113(a)(9). This is consistent with the current § 206.113(b)(5), except for FEMA adding ''for the following:'' after ''except'' and giving the exceptions in a list format across paragraphs (b)(5)(i)–(iii), for clarity; replacing ''those'' with ''improvements or additions'' for clarity; adding ''hazard'' to ''Eligible hazard mitigation measures'' for clarity since that is the defined term in § 206.111; adding to ''make repairs that'' before ''comply'' for clarity; and adding an exception for accessibility-related items for individuals with disabilities, for consistency with the changes to § 206.113(a)(9).

In § 206.113(b)(9), FEMA states that FEMA may not provide assistance under subpart D for business losses, including farm businesses. This is consistent with the current § 206.113(b)(9), except for FEMA removing ''and self-employment'' in order to allow the self-employed eligibility for essential tools. Currently, the self-employed are ineligible for IHP grants; so, artists and gig workers cannot apply for ONA personal property assistance for their self-employed personal property assistance items damaged in the disaster. Businesses will continue to be ineligible for business losses under 206.113(b)(9). Therefore, FEMA is allowing a self-employed individual to receive assistance under the ONA portion of the IHP for personal property losses under 206.119(b)(6)(iv) in their individual capacity. For example, under our changes, a gig worker could apply for personal property assistance for disaster damaged essential tools that are required for their livelihood. So, if they are a guitar player, then they could apply for ONA personal property assistance for repairing/replacing the guitar, whichever is needed.

For self-employed individuals, FEMA relies on the individual to self-certify the items required for their job.[323] Two RFI commenters [324] address challenges faced by self-employed individuals that participate in the ''gig economy.'' These individuals that have no employees other than themselves are classified by the U.S. Census Bureau as ''nonemployer businesses'' may face challenges identifying the types of assistance for which they qualify at FEMA and other Federal Agencies.

In Senate Report 115–283, which accompanied the Fiscal Year (FY) 2019 DHS Appropriations Act (Pub. L. 116–6) included the requirement that FEMA review its reimbursement policy, including in relation to Small Business Loans, for expenses incurred as a result of a major disaster or emergency by self-employed or freelance workers for tool repair or replacement, specialized or protective clothing, or other requirement equipment, for fairness in relation to other reimbursement policies. The Senate Report also requested a cost estimate.

FEMA's Individuals and Households Program Assistance for Occupational Tools FY 2019 Report to Congress (FY 2019 Report) found that FEMA IHP assistance is not a substitute for insurance and cannot compensate for all losses caused by a disaster. The IHP is intended to meet basic needs and supplement disaster recovery efforts. FEMA believed that it was appropriate to continue to direct businesses, including self-employed persons, to SBA so that they can secure low-interest loans for their disaster-related losses. Self-employment business losses are ineligible for FEMA assistance, meaning that FEMA does not record business-

[323] For self-employed applicants FEMA requires, a written statement from the applicant, including an itemized list of essential tools, specialized or protective clothing, computing devices, and equipment required for self-employment, verifying their need for the items. The statement must include, ''I hereby declare under penalty of perjury that the foregoing is true and correct,'' and be signed by the applicant. Tax return documentation would be required to establish self-employment (*e.g.,* Form 1040 or 1040–SR, Schedule C, etc.).

[324] FEMA–2021–0011–0187 and FEMA–2021–0011–0200.

related losses including occupational tool loss, from IHP applicants who self-report that their household's primary source of income is self-employment. Because of this ineligibility, FEMA could not provide a cost estimate about self-employment business losses from IHP applicants in the FY 2019 Report.

Currently, self-employed individuals are eligible for all FEMA assistance for their personal losses, except for necessary expenses and serious needs related to business losses. Non-self-employed individuals may receive assistance for disaster related costs for occupational tools, such as tool repair or replacement, essential computer, and uniforms, which may include specialized or protective clothing, but these are currently considered business losses for the self-employed, which makes them ineligible. The IFR changes this by removing ''self-employment'' from the list of conditions of ineligibility.

This IFR removes the requirement that applicants apply and receive an SBA loan denial before FEMA considers them for personal property assistance. FEMA assists self-employed individuals, solely related to their personal essential tools, without ever requiring them to seek loan assistance from SBA for these losses. In order to implement this change, FEMA is removing ''self-employment'' as a condition of ineligibility for business losses.

FEMA is making this policy change as there is stakeholder interest in such. Not only did FEMA receive two RFI comments on this matter, but obviously there is Congressional interest, since Senate Report 115–283 asked FEMA to review its policy.

In § 206.113(b)(10), FEMA states that FEMA may not provide assistance under subpart D for any items not otherwise authorized by §§ 206.117 and 206.119. This is consistent with current § 206.113(b)(10), except for FEMA replacing ''this section'' with ''§§ 206.117 and 206.119,'' for clarity since § 206.113 does not actually authorize any items.

F. Section 206.114—Criteria for Continued or Additional Assistance

FEMA revises § 206.114's heading of ''Criteria for continued assistance'' to ''Criteria for continued or additional assistance'' for clarity since it does not only cover ''Criteria for continued assistance.''

In § 206.114(a), FEMA adds a new paragraph heading of ''General'' for consistency since the rest of the paragraphs at this level have paragraph headings and to comply with the *Federal Register Document Drafting Handbook*.

In the second sentence of § 206.114(a), FEMA states that FEMA may provide initial and continued temporary housing assistance, financial or direct, upon request during the period of assistance, based on need, and generally only when adequate, alternate housing is not available or when the permanent housing plan has not been fulfilled through no fault of the applicant. This sentence is consistent with the current second sentence of § 206.114(a), except for FEMA providing clarifying language by adding ''initial and'' before ''continued'' for clarity; adding ''temporary'' between ''continued housing'' for consistency throughout the section; adding ''financial or direct, upon request'' before ''during,'' to clarify that ''continued temporary housing assistance'' covers both financial or direct assistance and to clarify that applicants must request CTHA; and removing the clause ''but not to exceed the maximum amount of assistance for the program.'' FEMA deletes the clause, as section 1212 of the DRRA authorized changes to the provision of IHP Assistance by removing the financial assistance maximum award limits for temporary housing assistance. These changes were retroactive to disasters declared on or after August 1, 2017.

''Upon request'' refers to the required income and housing costs documentation applicants in need of continued temporary housing assistance will have to complete to request additional assistance. Applicants may complete the IHP Application for Continued Temporary Housing Assistance, FEMA Form FF–104–FY–21–115, and the Supplemental Application for Continued Temporary Housing Assistance, FEMA Form FF–XXXXX, to request additional assistance. FEMA uses the information collected on the Application for Continued Temporary Housing Assistance to verify that an applicant continues to have a disaster-caused need for CTHA and to determine how much rental assistance the applicant may be eligible to receive.

For an applicant that is a homeowner and if the applicant's FEMA verified real property loss exceeds the amount of initial rental assistance awarded, FEMA will automatically mail the Application for Continued Temporary Housing Assistance after the initial rental assistance award. If the recorded FEMA-verified real property loss does not exceed the amount of initial rental assistance awarded, the applicant must call FEMA's Helpline to request an Application for Continued Temporary Housing Assistance. For an applicant that is a renter, the applicant must call FEMA's helpline to request an Application for Continued Temporary Housing Assistance. In § 206.114(b), FEMA replaces the paragraph heading of ''Additional criteria for continued assistance'' with ''Rental assistance'' for clarity.

In § 206.114(b), FEMA adds a new paragraph that states that FEMA may provide initial financial assistance for rent, also known as initial rental assistance, as described in § 206.117(b)(1)(i), to displaced eligible applicants to rent alternate housing accommodations for an initial time period established by FEMA.

FEMA reorganizes our current regulations at § 206.114(b)(1) through (5), as FEMA found that having the eligibility, non-eligibility, and criteria for continued assistance categories separate from the specific types of assistance made for very difficult reading. Therefore, FEMA instead of conflating the regulations into one paragraph, separates them into two paragraphs: ''Rental assistance'' and ''Direct housing assistance.'' There are no substantive changes in the reorganization, as we simply introduce initial and continued assistance for both rental and direct assistance in a clearer way.

In § 206.114(b)(1), we state that FEMA may periodically recertify all displaced applicants who received initial rental assistance and request continued rental assistance. All displaced applicants requesting continued rental assistance must take the following actions at certain points throughout the recertification process: submit rent receipts to show that they have exhausted or will exhaust previously provided funds; provide documentation demonstrating they lack the financial ability to pay their post-disaster housing costs and have a continued need for rental assistance; establish a realistic permanent housing plan; and provide documentation showing that they are making efforts to obtain permanent housing.

In the first new sentence of § 206.114(b)(1), FEMA clarifies that in order for displaced applicants to receive CTHA they must have been awarded initial rental assistance.

In the second sentence of § 206.114(b)(1), FEMA states that all displaced applicants requesting continued rental assistance must take the following actions at certain points throughout the recertification process. This sentence is not consistent with the current second sentence of

§ 206.114(b)(1) as FEMA currently requires that all applicants must establish a realistic permanent housing plan no later than the first certification for continued assistance. In this IFR, FEMA splits the recertification process into several timeframes and allow applicants to build upon their preliminary documentation as the disaster recovery continues. For example, within the first two payments of CTHA, FEMA will only require applicants to identify a plan for permanent housing. After the second two payments of CTHA, FEMA will require applicants to present documentation showing progress toward achieving their permanent housing plan and to identify any obstacles impeding the achievement of the plan. FEMA will use these submissions to conduct additional outreach to applicants who are encountering obstacles or to refer such applicants to voluntary organizations to assist them.

In order to help FEMA provide appropriate resources and assistance to applicants throughout their housing recovery process, applicants will select from a list of permanent housing plans on the Application for Continued Housing Assistance form based on their pre-disaster housing status.

The type of documentation that will be required to establish a permanent housing plan will be variable and flexible depending on an applicant's specific circumstances. For example, the following table provides a non-exhaustive list of the varying types of documentation that might be required based on the applicant's plan to achieve a permanent housing solution and pre-disaster status.

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Table 4—Documentation by Permanent Housing Plan (PHP) Type

Permanent Housing Plan	Pre-Disaster Housing Status	Applicants submit at least one of the following:
Repair/rebuild damaged dwelling	Homeowner	• Declarative statement, estimating the timeline for completion with supporting receipts of materials purchased • Contractor estimates, agreements, or other documents identifying timelines for repairs/construction • Permits
Build new home (at damaged dwelling or new site)	Homeowner	• Declarative statement, estimating the timeline for completion with supporting receipts of materials purchased • Contractor estimates, agreements, or other documents identifying timelines for repairs/construction • Permits
Purchase home	Homeowner	• Information on proof of progress, such as hiring a realtor, homes visited, offers submitted, closing date
Return to pre-disaster rental unit	Renter	• Commitment from landlord/property management to repair pre-disaster rental unit • Updates on repair progress from landlord/property management/public housing authority
Move into new rental unit within financial ability	Homeowner or Renter	• Proof of affordable rental housing search--rental resources contacted • Verifiable reason(s) unit unacceptable (not within financial ability, not accessible to one or more household members with disabilities, reasonable commuting distance, etc.)
Move in with family/friends	Homeowner or Renter	• Statement from family/friend that will be serving as landlord estimating the timeline for the move and agreeing applicant can live at the home

As post-disaster recovery can be a challenge for all applicants, FEMA will engage more closely to assist applicants in achieving a recovery outcome by the end of the period of assistance. FEMA will work with applicants through all

recertification phases to review their progress toward their PHP and identify specific resources to assist the applicant in achieving their recovery goals.

Table 5—Continued Temporary Housing Assistance Timeframes[325]

Table 5: Continued Temporary Housing Assistance Timeframes	
Timeframe	**Requirements and Type of Documentation**
Initial Recertification Phase: First two payments of CTHA	• Applicants identify PHP on CTHA form.
Intermediate Recertification Phase: Second two payments of CTHA	• Applicants provide full documentation showing progress toward their PHP. • Applicants identify any obstacles that may impede their progress due to no fault of their own. *Note: Based on the information submitted, FEMA will identify applicants who may need additional assistance and refer them to resources such as a Disaster Case Management Program, when authorized and available for the disaster; voluntary organizations, when available for the disaster; and other available resources and programs, as needed. If applicants are not showing progress towards completing their PHP, FEMA may deny further recertification until the applicant show progress. Applicants may appeal FEMA's decision.*
Concluding Recertification Phase: Final payments of CTHA and any extension of the period of assistance	• Applicants provide documentation showing continued progress towards completing their PHP. • Applicants identify any obstacles that may impede progress due to no fault of their own. *Note: FEMA will conduct outreach to applicants still receiving CTHA at this point to ensure the applicant's PHP is still achievable by the end of the period of assistance and identify any additional assistance applicants may need to achieve their PHP. FEMA will continue to refer applicants to available resources to assist them as needed. Based on the information submitted, FEMA may deny applicants who do not show sufficient progress.*

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In § 206.114(b)(1)(i), FEMA states that displaced applicants requesting continued rental assistance must submit rent receipts to show exhaustion of previously provided funds. This sentence is generally consistent with the current first sentence of § 206.114(b)(2), except for FEMA adding ''displaced'' before ''applicants'' for consistency; and replacing ''they have exhausted the FEMA rent funds and'' with less limiting language ''that they have exhausted or will exhaust previously provided funds.'' While this is less limiting, it is still the Program's intent that the applicant must exhaust their funds. However, funds may be awarded prior to exhaustion to prevent a gap in assistance.

In § 206.114(b)(1)(ii), FEMA states that displaced applicants requesting continued rental assistance must provide documentation demonstrating they lack the financial ability to pay their post-disaster housing costs and have a continued need for rental

[325] Depending on the size and scope of the disaster(s), FEMA may adjust the timeframes in the table, as needed. FEMA will continue to engage applicants throughout the recertification process, especially those who continue to receive assistance toward the end of disaster in order to ensure they are able to better transition into a non-FEMA provided housing solution.

assistance. The only part of § 206.114(b)(1) that currently exists is the clause to ''provide documentation,'' in current § 206.114(b)(2). The language, ''provide documentation,'' refers to the submission of the current recertification form, FEMA Form 104–FY–21–115, IHP Application for Continued Temporary Housing Assistance, as described in Chapter 3: IV.C.*2.* of IAPPG 1.1.[326] Thereby, the way the displaced applicant provides documentation that they lack the financial ability to pay their post-disaster housing costs and have a continued need for assistance is by completing the CTHA application and providing any additional documentation, as needed.

In § 206.114(b)(1)(iii), FEMA states that displaced applicants requesting continued rental assistance must establish a realistic permanent housing plan, which is consistent with current § 206.114(b)(1) except for the timing of the realistic permanent housing plan. Currently, the realistic permanent housing plan is required no later than the first certification for continued assistance. In this IFR, FEMA no longer requires the realistic housing plan at the first certification for continued assistance.

In § 206.114(b)(1)(iv), FEMA states that displaced applicants requesting continued rental assistance must provide documentation showing that they are making efforts to obtain permanent housing, which is consistent with current § 206.114(b)(1).

In the first sentence of § 206.114(b)(2), FEMA states that FEMA expects that pre-disaster renters will use their initial rental assistance to obtain permanent housing. This is consistent with the current first sentence of § 206.114(b)(3), except for FEMA removing ''generally'' before ''expects'' for clarity. FEMA does not want to suggest that in some cases applicants should not seek to obtain permanent housing.

In the second sentence of § 206.114(b)(2), we state that FEMA may provide continued rental assistance to pre-disaster renters with a continuing disaster-related housing need. This is consistent with the current second sentence of 206.114(b)(3), except for FEMA replacing ''we'' with ''FEMA'' for clarity; replacing ''may certify them during the period of assistance, for'' with ''may provide'' before ''continued'' for clarity; replacing ''rent'' with ''rental'' before assistance; and replacing ''when adequate, alternate housing is not available, or when they have not realized a permanent housing plan through no fault of their own'' with ''to pre-disaster renters with a continuing disaster-related housing need'' for clarity. FEMA's language is closer to the Stafford Act language at 42 U.S.C. 5174 which is our authorizing statute.

Currently, § 206.114 discusses rental assistance and direct housing assistance in the same paragraph. But, in this IFR we separate rental assistance from direct housing assistance. There will be repetitive language in 206.114(b) and (c), in order to clarify to the public what the requirements are for rental assistance and direct housing assistance.

In § 206.114(c), FEMA adds a new paragraph heading ''Direct housing assistance,'' for consistency since the rest of the paragraphs at this level have paragraph headings and to comply with the *Federal Register Document Drafting Handbook*.

In § 206.114(c), FEMA states that FEMA may provide direct housing assistance as described in § 206.117(b)(1)(ii), to displaced eligible applicants who are unable to make use of financial assistance to rent adequate alternate housing. FEMA may periodically recertify all displaced applicants receiving direct housing assistance for continued direct housing assistance. All displaced applicants who need continued direct housing assistance must take the following actions at certain points throughout the recertification process: (1) establish a realistic permanent housing plan; and (2) provide documentation showing that they are making efforts to obtain permanent housing throughout the recertification process. The clause in § 206.114(c)(1) is generally consistent with the current first sentence of § 206.114(b)(1), except for FEMA removing the phrase ''no later than the first certification for continued assistance.'' The clause in § 206.114(c)(2) is generally consistent with the current second sentence of § 206.114(b)(1), except for FEMA adding ''throughout the recertification process'' after ''permanent housing.''

In § 206.114(d), FEMA adds a new paragraph heading ''Other assistance,'' for consistency since the rest of the paragraphs at this level have paragraph headings and to comply with the *Federal Register Document Drafting Handbook*.

In § 206.114(d) through (1), FEMA adds a new paragraph to state that FEMA may provide repairs or housing replacement assistance, as described in § 206.117(b)(2) and § 206.117(b)(3), lodging expense reimbursement, as described in § 206.117(b)(1)(i), or other needs assistance, as described in § 206.119, to eligible applicants. If FEMA requires more information to process an applicant's initial request for assistance, it may request additional information. This new language is intentionally broad in case FEMA finds an alternate way to contact applicants to request additional information in the future (*e.g.,* via text) and it codifies Chapter 3: C.*2.* of IAPPG 1.1, which is a narrower, as it states that an applicant may receive a letter requesting additional information.[327]

In § 206.114(d)(2), FEMA states that after the initial award of assistance, applicants requesting additional assistance for repairs, housing replacement, lodging expense reimbursement, personal property, transportation, child care, medical, dental, funeral, moving and storage, or other necessary expenses and serious needs may submit an appeal as outlined in § 206.115 and will be required to submit information and/or verifiable documentation established via guidance identifying the additional need. In § 206.114(d)(2), FEMA combines current § 206.114(b)(5) and § 206.114(b)(6) into one sentence, so as not to have to repeat the following language twice as it is used in both current § 206.114(b)(5) and current § 206.114(b)(6): ''individuals or households requesting additional'' and ''will be required to submit information and/or documentation identifying the continuing need.'' Section 206.114(d)(2) is consistent with combining current § 206.114(b)(5) and § 206.114(b)(6), except for FEMA adding ''After the initial award of assistance'' to the beginning of § 206.114(d)(2) for clarity; replacing ''Individual or households'' with ''Applicants for consistency;'' adding ''repairs, housing replacement, lodging expense reimbursement'' before ''personal'' for clarity and consistency; adding ''child care'' before ''medical;'' adding ''may submit an appeal as outlined in § 206.115 and'' before ''will be'' for clarity; adding ''verifiable'' before ''documentation;'' adding ''established via guidance'' before ''identifying;'' and replacing ''continuing'' with ''additional'' at the end of the sentence for clarity purposes. ''Continuing need'' is not appropriate in the sentence as there is not a ''continuing need'' for repair assistance, rather an ''additional'' need of repair assistance is more appropriate. FEMA adds child care; as section 1108 of the Sandy Recovery Improvement Act of

[326] See page 82 of IAPPG 1.1 Individual Assistance Program and Policy Guide | *FEMA.gov*.

[327] See page 76 of IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf*.

2013 (SRIA) [328] established child care as an eligible expense under the ONA provision of the IHP.[329] This is a clarifying edit; as, currently FEMA implements child care assistance through Chapter 3: VI.B.*3.* of IAPPG 1.1.[330] FEMA adds ''verifiable'' documentation at § 206.114(d)(2), as per PKEMRA FEMA has a responsibility for identifying fraud, waste, and abuse. Therefore, FEMA is making this provision, for clarity and transparency to allow the public to know that the documentation they submit to support their requests for CTHA must be verifiable. FEMA will call service providers as applicable to validate the veracity of the supporting documentation that applicants submit to FEMA.

FEMA adds ''may submit an appeal as outlined in § 206.115'' for clarity; however, this is the current process so it will not change anything for applicants. Page 66, Chapter 3: II.C. *2.* of the IAPPG 1.1 says that applicants may submit a written appeal if they disagree with any FEMA determination. This is in line with what FEMA states in 206.114(d)(2). Page 68, Chapter 3: II.C.*5.* of the IAPPG 1.1, states that the appeal letter should be accompanied by documentation to support the appeal request, such as repair estimates, contractor estimates, or other supporting documentation. Table 6 lists supporting documentation that must be submitted to FEMA to demonstrate current housing costs and the use of the previously awarded rental assistance or CTHA funds.

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[328] Sandy Recovery Improvement Act of 2013, Pub. L. 113–2, 127 Stat. 47 (Jan. 29, 2013), 42 U.S.C. 5174(e)(1).

[329] Initially, the Recovery Policy, Disaster Assistance for Child Care 9461.1, Jan. 17, 2014 was the controlling policy, *https://www.fema.gov/sites/default/files/2020-07/recovery-policy_disaster%20assistance-child-care.pdf.*

[330] See pages 155–160 of IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

Table 6—Continued Temporary Housing Assistance Documentation

Type of Documentation	Description of Documentation
Copy of current lease or rental agreement signed by the landlord and tenant	The lease or rental agreement should include location of the unit, amount of rent, duration of lease, and number of occupants.
Proof prior Rental Assistance provided by FEMA has been used for temporary housing	• Rent receipts showing date, location of rental unit, and time period for which the payment applies. • If separate from the rent, receipts showing payment of essential utilities. Essential utilities are gas, electric, water, oil, trash, and sewer. • If applicable, receipt showing payment of security deposit for up to one month's rent. • In instances where rent receipts are not available, the lease or rental agreement may serve as proof of use of prior Rental Assistance. • Hotel/motel receipts showing date, address of hotel/motel, and time period for which payment applies. Only the cost of the room and taxes charged by the hotel will be considered toward acceptable exhaustion of Rental Assistance.
Proof of current post-disaster income for all members of the household 18 years and older	Examples include, but are not limited to: • Recent pay stubs. • W-2 forms or tax returns from the most recent tax year. • Documentation of self-employment, if applicable. • Documentation of government assistance, including Social Security. • Statement of no income, if applicable.
If still responsible for costs related to pre-disaster home: Proof of current housing costs for the pre-disaster home, if applicable	• Mortgage statement or lease/rental agreement for the disaster-damaged primary residence. • Real estate tax statement and homeowners or renters' insurance statement, if paid separately from the mortgage. • Essential utility bill(s) for the disaster-damaged primary residence: gas, electric, oil, trash, water, and sewer.

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Upon subsequent requests for CTHA, applicants will only need to submit supporting documentation for income and housing costs if the household's income or housing costs have changed. See 44 CFR 206.114(b).

G. Section 206.115—Appeals

In the first sentence of § 206.115(a), FEMA states that under the provisions of the Stafford Act, 42 U.S.C. 5189a, applicants for assistance under subpart D may appeal any determination of eligibility for assistance made under subpart D. This sentence is consistent with the current first sentence of § 206.115(a), except for FEMA removing ''section 423 of'' and inserting ''42 U.S.C. 5189a,'' before applicants. FEMA makes these edits for public ease of reference, as a United States Code cite is more accessible to the public and referencing the section of the Stafford Act just increases the length of the regulation.

In the first sentence of § 206.115(b), FEMA states that appeals must include a written explanation or verifiable documentation for the appeal and meet the requirements of § 206.117, as applicable. This sentence is consistent with the current first two words of the first sentence of § 206.115(b). In the first sentence of § 206.115(b), FEMA replaces the clause ''be in writing and explain the reason(s) for the appeal'' with ''include a written explanation or verifiable documentation for the appeal'' to reduce the complexity, to streamline the process, to reduce FEMA processing time, and to decrease the burden on applicants to successfully appeal a determination. This language allows applicants to continue to submit a written letter of explanation to enhance their appeal, if they choose, and establishes the requirement to submit either a written appeal or verifiable documentation—thus reducing the need for additional letters requesting this information from

applicants. Finally, FEMA adds a cross reference for consistency to the end of the first sentence of § 206.115(b) ''and meet the requirements of § 206.117, as applicable'' since FEMA's current regulations at §§ 206.117(b)(2)(vii), 206.117(b)(3)(iv), and 206.117(b)(4)(iii) include cross references to the appeals procedures in § 206.115.

In the second sentence of § 206.115(b), FEMA states ''See §§ 206.117(b)(2)(vi), 206.117(b)(3)(iv), and 206.117(b)(4)(iii).'' FEMA makes this addition to the current regulations for clarity; as, the cross references to the appeals procedures in § 206.115 already exist in FEMA's current regulations at §§ 206.117(b)(2)(vii), 206.117(b)(3)(iv), and 206.117(b)(4)(iii).

In the third sentence of § 206.115(b), FEMA states that if someone other than the applicant files the appeal, then the applicant must also submit a signed statement giving that person authority to represent them. This sentence is consistent with the current third sentence in § 206.115(b), except for FEMA removing ''his, her, or'' before ''them'' as ''his or her'' is redundant.

In the fourth sentence of § 206.115(b), FEMA states that if a written explanation is submitted, it must be signed by the applicant or a person the applicant designates to represent them. This sentence is consistent with the intent of the current second sentence in § 206.115(b). This sentence is trying to ensure that the public understands that if a written explanation is submitted, it has to be signed either by the applicant or the person the applicant chooses to represent them. If the applicant submits verifiable documentation no signature is necessary.

In § 206.115(c), FEMA states that applicants must appeal to FEMA for decisions made under subpart D, unless FEMA has made a grant to the State to provide assistance to individuals and households under § 206.120(a), State administration of other needs assistance; then the applicant must appeal to the State. This is consistent with the current § 206.115(c), except for FEMA replacing ''the Regional Administrator or his/her designee'' with ''FEMA'' to ensure continued consistency in processing across disasters at the national level. This change also aligns regulations with current practices that already streamline the appeals process to eliminate delays.

In the second sentence of § 206.115(d), FEMA states that if someone other than the applicant is submitting the request, then the applicant must also submit a signed statement giving that person authority to represent them. This is consistent with the current second sentence of § 206.115(d), except for FEMA placing ''him or her'' with ''them'' for consistency with the edits suggested in the third sentence of § 206.115(b).

FEMA removes current § 206.115(e), which states that the appropriate FEMA or State program official will notify the applicant in writing of the receipt of the appeal. FEMA removes current § 206.115(e), to codify the current practice that the applicant is not notified in writing of receipt of the appeal.

In the first sentence of § 206.115(e), FEMA states that FEMA or the appropriate State official will review the original decision after receiving the appeal. This sentence is consistent with the current first sentence § 206.115(f), except for FEMA replacing ''the Regional Administrator or his/her designee'' with ''FEMA'' to ensure continued consistency in processing across disasters at the national level and adding ''the'' before ''appropriate'' for grammar purposes.

In the second sentence of § 206.115(e), FEMA states that FEMA or the State, as appropriate, will give the appellant a written notice of the disposition of the appeal and a reason for the determination within 90 days of receiving the appeal. This sentence is consistent with the current second sentence of § 206.115(f), except for FEMA removing ''the'' before ''receiving'' for grammar purposes and adding ''and a reason for the determination'' for clarity and transparency; as, it is currently FEMA's practice to provide a reason in the written notice of the disposition of the appeal.

In the third sentence of § 206.115(e), FEMA states that the decision of the FEMA or State appellate authority is final. This sentence is consistent with the current third sentence of § 206.115(f), except for FEMA adding a clarifying phrase ''FEMA or State'' before ''appellate.''

H. Section 206.117—Housing Assistance

In § 206.117(a), FEMA removes the definition ''Caused by the disaster'' since FEMA is paying for pre-existing conditions if the component itself was damaged by the disaster, adding the term ''Multifamily Rental Housing,'' and revising the definition of ''Real Property Component'' or ''Component,'' as follows.

Multifamily Rental Housing. FEMA defines the term ''Multifamily Rental Housing'' to mean a rental property that contains three or more dwelling units contained within one building, each such unit providing complete and independent living facilities for one or more persons, including permanent provisions for living, sleeping, cooking, and sanitation. FEMA has used this definition since the January 1, 2019, release of the Individual Assistance Program and Policy Guide at Chapter 3: V.D.*1.*[331] Section 1103 of SRIA [332] established FEMA's authority to lease and repair rental units located in areas covered by a major disaster declaration for temporary housing of applicants, and section 1213 of DRRA [333] reaffirmed this authority. Currently, FEMA has no regulations specific to the selection of properties to be leased and repaired, the types of repairs that may be funded, or the intention that these rental units are to be used as a type of Direct Temporary Housing Assistance. Therefore, this IFR will detail the requirements of implementing Multifamily Lease and Repair as a form of Direct Temporary Housing Assistance including addition of the definition of ''Multifamily Rental Housing.''

However, FEMA currently has a definition of ''Multifamily Rental Housing'' in the IAPPG 1.1 at Chapter 3: V.E.*1.*[334] that is consistent with the definition of ''Multifamily Rental Housing'' here except for the clarifying phrase ''contained within one building.'' This phrase was added to clarify that the definition of multifamily rental housing is limited to rental properties contained within one building, such as apartments, and does not include rental properties composed of multiple separate dwelling units on the same plot of land.

Prior to the definition of ''Multifamily Rental Housing'' in the 2019 version of the IAPPG, FEMA followed the HUD regulations at 12 CFR 1282.1(b), which states multifamily housing means a residence consisting of more than four dwelling units. However, during DR–4277–LA, the available housing market of multifamily buildings proved insufficient to meet the demand for temporary housing in the affected area. FEMA received hundreds of calls and emails from property owners interested in MLR. Despite a growing need for temporary housing and interest in MLR, many properties were immediately excluded based solely on the fact that the buildings had four or fewer units. Based on this experience, FEMA

[331] See page 105 of IAPPG. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

[332] 42 U.S.C. 5174(c)(1)(B).

[333] Disaster Recover Reform Act of 2018, Public Law 115–254, 132 Stat. 3448 (Oct. 5, 2018), 42 U.S.C. 5174(c)(1)(B).

[334] See page 107 of IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

decided to expand the criteria to include three or more dwelling units because the risk of diminishing returns on the time and labor required to assess and scope potential properties was more than offset by making MLR viable in communities where three- and four-unit buildings were prevalent and larger multifamily properties were scarce.

When provided the authority to repair or make improvements to existing multifamily housing units as a form of direct temporary housing assistance via SRIA, FEMA initially defined ''multifamily housing'' as ''a property that consists of not less than five dwelling units in one site, each such unit providing complete living facilities including provisions for cooking, eating, and sanitation within the unit.'' [335]

FEMA specifically seeks public comment on whether its definition is appropriate, or should be changed from ''three or more dwelling units contained within one building'' to ''two or more dwelling units contained within one building.''

Real Property Component or Component. FEMA revises the term ''Real Property Component'' or ''Component'' to mean each individual part of a dwelling as enumerated in paragraph (b)(2)(ii) of § 206.117. This is consistent with the definition of ''Real Property Component'' or ''Component'' in current § 206.117(a) except for FEMA removing the phrase ''that makes it habitable,'' as whether or not the component makes the dwelling habitable is now immaterial in the definition. The overarching eligibility requirement for housing assistance is whether or not the applicant's home is uninhabitable. Once an applicant has hit that threshold, FEMA is simplifying the program to pay for all components listed in paragraph (b)(2)(ii) of § 206.117 as long as the component incurred some disaster damage and then repair those components ''to'' a safe and sanitary living or functioning condition.

FEMA revises subparagraph heading (i) of § 206.117(b)(1) from ''Financial'' to ''Rental'' assistance for clarity. In the first sentence of § 206.117(b)(1)(i), FEMA states that eligible displaced applicants may receive rental assistance to rent alternate housing resources. This sentence is consistent with the current first sentence of § 206.117(b)(1)(i), except for FEMA replacing ''individuals and households'' with ''displaced applicants'' for clarity; replacing ''financial'' with ''rental'' for clarity; and removing ''existing rental units, manufactured housing, recreational vehicles, or other readily fabricated dwellings'' for clarity. There is no reason to list the definition of ''Alternate housing resources'' in the sentence after using the defined term. Finally, in the third sentence of § 206.117(b)(1)(i), FEMA states that this may include lodging expense reimbursement for reasonable short-term lodging expenses for individuals or households who have not received displacement assistance (See § 206.119(b)(2)) in the immediate aftermath of a disaster. This is consistent with the third sentence of current § 206.117(b)(1)(i), except for FEMA replacing ''includes'' with ''may include,'' adding ''lodging expense'' before ''reimbursement,'' replacing ''that'' with ''for,'' and adding ''who have not received displacement assistance (See § 206.119(b)(2))'' after ''households,'' and removing ''incur'' for clarity. FEMA adds the cross-reference to the displacement assistance regulations for ease of review.

In § 206.117(b)(1)(i)(A), FEMA states that FEMA will include all members of a pre-disaster household in a single registration and will provide assistance for one temporary housing residence, unless FEMA determines that the size or nature of the household requires that we provide assistance for more than one residence. This sentence is consistent with the current § 206.117(b)(1)(i)(A), except for FEMA replacing ''the Regional Administrator or his/her designee'' with ''FEMA'' for consistency.

In the first sentence of § 206.117(b)(1)(i)(B), FEMA states that FEMA will base the amount of assistance on the current fair market rent for existing rental units. This sentence is consistent with the current first sentence of § 206.117(b)(1)(i)(B), except for FEMA replacing ''rental'' with ''amount of'' for clarity; removing ''Department of Housing and Urban Development's,'' as it is duplicative; and replacing ''rates'' with ''rent'' for clarity. FEMA replaces ''fair market rates'' with ''fair market rent'' as the defined term at § 206.111 is ''fair market rent.'' Additionally, the definition of ''fair market rent'' states that the fair market rental rates applied are those identified by the Department of Housing and Urban Development as being adequate for existing rental housing in a particular area; since the term provides that the rates are identified by HUD, FEMA does not need to repeat that in the first sentence of § 206.117(b)(1)(i)(B).

In the second sentence of § 206.117(b)(1)(i)(B), FEMA states that FEMA will further base the applicable rate on the location of the rental unit and the number of bedrooms the household requires, as determined by FEMA. This sentence is consistent with the current second sentence of § 206.117(b)(1)(i)(B), except for FEMA removing the phrase ''household's bedroom requirement and the'' from the beginning of the sentence and replacing it with the clarifying phrase ''and the number of bedrooms the households requires, as determined by FEMA'' to the end of the sentence. This will codify existing policy and practice that FEMA determines the number of bedrooms a household requires, for clarity.[336]

In § 206.117(b)(1)(i)(C), FEMA states that rental assistance may include the payment of the cost of utilities, excluding telephone, cable, television, and internet service. This sentence is not consistent with current § 206.117(b)(1)(i)(C), as the current regulations state that all utility costs and utility security deposits are the responsibility of the occupant except where the utility does not meter utility services separately and utility services are part of the rental charge. Section 689d of PKEMRA [337] updated section 408 of the Stafford Act, at 42 U.S.C. 5174(c)(1)(A), to allow for the payment of the cost of utilities, excluding telephone service. This currently is implemented via the IAPPG 1.1 at Chapter 3: IV.B. which further explains this distinction between essential and non-essential utilities and clarifies that cable, TV, and internet service are also excluded.[338] The IFR will codify this provision of the IAPPG 1.1.

In § 206.117(b)(1)(i)(D), FEMA states that rental assistance may include the payment of the cost of security deposits, not to exceed an amount equal to the fair market rent for one month, as determined under paragraph (b)(1)(i)(B) of § 206.117. This sentence is not consistent with the current two sentences of § 206.117(b)(1)(i)(D), as the current regulations state that the occupant is responsible for all housing security deposits and that in extraordinary circumstances, the Regional Administrator or his/her designee may authorize the payment of security deposits; however, the owner or occupant must reimburse the full

[335] See page 73 of the Individuals and Households Program Unified Guidance, released on September 30, 2016, at FEMA Individuals and Households Program Unified Guidance.

[336] See the ''fair market rent'' box on page 109 of Chapter 3: V.E.*2.* of IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

[337] Post-Katrina Emergency Management Reform Act of 2006, 109–295, 120 Stat. 1452 (Oct. 4, 2006), 6 U.S.C. 701 note.

[338] See page 80 of IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

amount of the security deposit to the Federal Government before or at the time that the temporary housing assistance ends. Section 689d of PKEMRA updated the Stafford Act, at 42 U.S.C. 5174(c)(1)(A), to allow for the payment of security deposits. Currently, FEMA implements Section 689d of PKEMRA via the IAPPG 1.1 at Chapter 3: IV.C.*2.*,[339] and FEMA limits security deposits to the amount equal to one month's rent, if applicable. Therefore, the changes at § 206.117(b)(1)(i)(D) are more limiting then the PKEMRA amendment, but consistent with current practice.

In § 206.117(b)(1)(i)(E), FEMA states that applicants that receive displacement assistance under § 206.119(b)(2) must request rental assistance if their disaster-caused temporary housing needs continue once displacement assistance is exhausted. This new paragraph is for public transparency. With the new displacement assistance, if an applicant wants to receive rental assistance after receiving displacement assistance, they now have to contact FEMA to let FEMA know that they need continued temporary housing assistance in the form of rental assistance. If FEMA did not propose § 206.117(b)(1)(i)(E), the only notification the public would have of this would be from the second sentence of § 206.114(a), which says that FEMA may provide initial and CTHA, financial or direct, upon request during the period assistance.

In § 206.117(b)(1)(ii)(A), FEMA states that FEMA may provide direct assistance in the form of purchased or leased temporary housing units directly to displaced applicants who lack available housing resources and are unable to make use of the assistance provided under paragraph (b)(1)(i) of § 206.117. This sentence is consistent with the current § 206.117(b)(1)(ii)(A), except for FEMA replacing ''individuals or households'' with ''displaced applicants'' and replacing ''would be'' with ''are'' for clarity.

In § 206.117(b)(1)(ii)(B), FEMA states that FEMA will include all members of a pre-disaster household in a single application and will provide assistance for one temporary housing unit, unless FEMA determines that the size or nature of the household requires that we provide assistance for more than one temporary housing unit. This is consistent with current § 206.117(b)(1)(ii)(B), except for FEMA replacing ''residence'' with ''unit;'' replacing ''the Regional Administrator or his/her designee'' with ''FEMA;'' and replacing ''residence'' with ''temporary housing unit,'' for clarity and consistency.

In § 206.117(b)(1)(ii)(C), FEMA states that any site upon which a FEMA-provided temporary housing unit is placed must comply with applicable State and local codes and ordinances, as well as 44 CFR part 9, Floodplain Management and Protection of Wetlands, and all other applicable environmental and historic preservation laws, regulations, Executive orders, and agency policy. This is consistent with current § 206.117(b)(1)(ii)(C), except for FEMA adding ''temporary'' before ''housing'' for consistency and replacing ''Orders'' with ''orders'' for formatting purposes.

In § 206.117(b)(1)(ii)(E), FEMA states that FEMA-provided or funded temporary housing units may be placed in the locations, listed in subparagraphs *(1)–(4).* This is consistent with current § 206.117(b)(1)(ii)(E), except that for consistency FEMA adding ''temporary'' before ''housing.''

In § 206.117(b)(1)(ii)(E)*(1),* FEMA states that FEMA-provided or funded temporary housing units may be placed at a commercial site that is complete with utilities, when FEMA determines that the upgrading of commercial sites, or installation of utilities on such sites, will provide more cost-effective, timely and suitable temporary housing than other types of resources. This is consistent with current § 206.117(b)(1)(ii)(E)*(1),* except for FEMA replacing ''the Regional Administrator or his/her designee'' with ''FEMA'' for consistency and removing the superfluous clause ''then Federal assistance may be authorized for such actions.''

In § 206.117(b)(1)(ii)(E)*(2),* FEMA states that FEMA-provided or funded temporary housing units may be placed at a private site that an applicant provides, complete with utilities, when FEMA determines that the cost of installation or repairs of essential utilities on private sites will provide more cost effective, timely, and suitable temporary housing than other types of resources. This is consistent with current § 206.117(b)(1)(ii)(E)*(2),* except for FEMA replacing ''the Regional Administrator or his/her designee'' with ''FEMA'' for consistency and removing the superfluous clause ''then Federal assistance may be authorized for such actions.''

In § 206.117(b)(1)(ii)(E)*(3),* FEMA states that FEMA-provided or funded temporary housing units may be placed at a group site that accommodates two or more temporary housing units and is complete with utilities, provided by the State or local government, when FEMA determines that the cost of developing a group site provided by the State or local government, to include installation or repairs of essential utilities on the sites, will provide more cost effective, timely, and suitable temporary housing than other types of resources. This is consistent with current § 206.117(b)(1)(ii)(E)*(3),* except for clarity and consistency FEMA adds ''temporary housing'' before ''units,'' replaces ''the Regional Administrator or his/her designee'' with ''FEMA,'' removes the superfluous clause ''then Federal assistance may be authorized for such actions,'' and reorganizes the first portion of subparagraph *(3)* for clarity and consistency.

In § 206.117(b)(1)(ii)(E)*(4),* FEMA states that FEMA-provided or funded temporary housing units may be placed at a group site provided by FEMA, if determined that such a site would be more economical or accessible than one that the State or local government provides. This is consistent with current § 206.117(b)(1)(ii)(E)*(4),* except for FEMA replacing ''the Regional Administrator or his/her designee'' with ''FEMA'' for consistency and replacing ''determines'' with ''determined'' for grammar purposes.

In § 206.117(b)(1)(ii)(F), FEMA states that if FEMA determines it would be a cost-effective alternative to other temporary housing options, FEMA may enter into lease agreements with owners of multifamily rental housing properties to house displaced applicants eligible for assistance under subpart D.

In § 206.117(b)(1)(ii)(F)*(1),* FEMA states that FEMA may only enter into lease agreements with owners of multifamily rental housing properties impacted by a major disaster or located in areas covered by a major disaster declaration.

In § 206.117(b)(1)(ii)(F)*(2),* FEMA states that FEMA may make repairs or improvements to properties under such lease agreements, to the extent necessary to serve as temporary housing, provided, however, that the value of the improvements or repairs must be deducted from the value of the lease agreement.

FEMA is adding these subparagraphs since section 1103 of SRIA [340] established FEMA's authority to lease and repair rental units located in areas covered by a major disaster declaration for temporary housing of applicants,

[339] See page 84 of IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

[340] 42 U.S.C. 5174(c)(1)(B).

and section 1213 of DRRA [341] reaffirmed this authority.[342] Currently, FEMA has no regulations specific to the selection of properties to be leased and repaired, the types of repairs that may be funded, or the intention that these rental units are to be used as a type of Direct Temporary Housing Assistance. Therefore, this IFR will detail the requirements of implementing Multifamily Lease and Repair as a form of Direct Temporary Housing Assistance.

However, FEMA currently has guidance regarding MLR that is consistent with § 206.117(b)(1)(ii)(F). The IAPPG 1.1 at Chapter 3: V.E.*2.* added reference to an updated two-tier approval process for determining cost-effectiveness of MLR.[343] Under this process, FEMA determines the cost-effectiveness of a potential MLR property, compared to other forms of Direct Temporary Housing Assistance, by estimating the cost of repairs or improvements to the property, estimating the value of the lease agreement, and calculating the net per-unit cost to FEMA. MLR property repairs may be approved by the RA or the Federal Coordinating Officer, if the RA has delegated the authority to the Federal Coordinating Officer, if the per unit cost does not exceed the average per unit acquisition cost of the smallest mobile housing unit in FEMA's inventory. If the per unit cost of the MLR property repairs does exceed this threshold amount, they must be approved by the IA Division Director and the RA or the Federal Coordinating Officer must provide a justification for why increasing MLR property costs above the per unit cost threshold is a more feasible, cost-effective, and survivor-centric solution.

Additionally, FEMA currently has guidance regarding MLR that is consistent with § 206.117(b)(1)(ii)(F)*(1).* On page 107 of the IAPPG 1.1 at Chapter 3: V.E.*1.,* FEMA states that properties eligible for MLR must be located in a county/jurisdiction designated for Individual Assistance.[344]

FEMA also currently has guidance regarding MLR that is consistent with § 206.117(b)(1)(ii)(F)*(2).* On page 109 of the IAPPG 1.1 at Chapter 3: V.E.*2.,* FEMA states that under the terms of any lease agreement for potential MLR property, the value of the improvements or repairs shall be deducted from the value of the lease agreement.[345]

In the first sentence of § 206.117(b)(1)(ii)(G), FEMA states that after the end of the 18-month period of assistance, FEMA may begin to charge up to the fair market rent for each temporary housing unit provided. This sentence is consistent with the current first sentence of § 206.117(b)(1)(ii)(F), except for FEMA removing ''rate'' from ''fair market rent rate,'' since the defined term at § 206.111 is ''fair market rent'' not ''fair market rent rate.''

The second and third sentences of § 206.117(b)(1)(ii)(G) are consistent with the second and third sentences of current § 206.117(b)(1)(ii)(F), except for the change to the paragraph structure.

Section 206.117(b)(1)(ii)(H) is consistent with current § 206.117(b)(1)(ii)(G), except for the change to the paragraph structure.

Section 206.117(b)(1)(ii)(H)*(1)* through *(3)* is consistent with current § 206.117(b)(1)(ii)(G)*(1)* through *(3),* except for the changes to the paragraph structure. In § 206.117(b)(1)(ii)(H)*(4)* through *(5),* FEMA states that FEMA may terminate direct assistance for reasons that include, but are not limited to the following: the occupant(s) failed to comply with any term of the lease/rental agreement or other rules of the site where the temporary housing unit is located; or the occupant(s) does not provide evidence documenting that they are working towards a permanent housing plan. This is consistent with current § 206.117(b)(1)(ii)(G)*(4)* through *(5),* except for FEMA adding ''temporary housing'' before ''unit'' for consistency and adding ''semicolon or'' after ''located'' as a technical correction.

The first sentence of § 206.117(b)(1)(ii)(I) is consistent with current § 206.117(b)(1)(ii)(H), except for the changes to the paragraph structure.

In the second sentence of § 206.117(b)(1)(ii)(I), FEMA states that this notice will specify the reasons for termination of assistance and occupancy, the date of termination, the procedure for appealing the determination, and the occupant's liability for such additional charges as FEMA deems appropriate after the termination date, including fair market rent for the unit. This sentence is consistent with the current second sentence of § 206.117(b)(1)(ii)(H), except for FEMA replacing ''the Regional Administrator or his/her designee'' with ''FEMA'' to ensure continued consistency in processing across disasters at the national level.

Section 206.117(b)(1)(ii)(J) through (b)(2) is consistent with current § 206.117(b)(1)(ii)(I) through (b)(2), except for the changes to the paragraph structure.

In § 206.117(b)(2)(i), FEMA states that FEMA may provide financial assistance for the repair of an owner-occupied primary residence if: the eligibility criteria in § 206.113 are met; FEMA determines the dwelling was damaged by the disaster; and the damage is not covered by insurance. This sentence is consistent with the current § 206.117(b)(2)(i), except for FEMA removing the phrase ''real property components in'' before ''an owner-occupied primary residence;'' adding ''FEMA determines'' after ''met;'' removing ''to the component'' after ''damage'' and replacing ''component'' with ''dwelling,'' as the Stafford Act does not limit repairs to ''components'' and replacing ''owner's'' with ''owner-occupied'' for consistency as *owner-occupied* is the defined term in § 206.111; removing the current § 206.117(b)(2)(i)(B) that ''the component was functional immediately before the declared event'' and removing current § 206.117(b)(2)(i)(E) that the ''repair of the component is necessary to ensure the safety or health of the occupant or to make the residence functional,'' and removing the clause ''and the damage was caused,'' since FEMA is paying for pre-existing conditions if the component itself was damaged by the disaster.

In § 206.117(b)(2)(ii), FEMA states that FEMA may provide financial assistance for the repair of the disaster damaged dwelling to a safe and sanitary living or functioning condition. This clause is consistent with the current § 206.117(b)(2)(ii), except for FEMA adding ''the disaster damaged dwelling to a safe and sanitary living or functioning condition including'' after ''of.'' These additions align with the changes that make it clear that only disaster damaged dwellings (regardless of their pre-disaster condition) may receive repair assistance, as FEMA may only pay to restore disaster damage to a safe and sanitary living or functioning condition. If the dwelling was not touched by the disaster, it will not be eligible for repair assistance.

In response to public comments, FEMA is also changing the regulatory text at § 206.117(b)(2) and a new § 206.113(a)(9) as a part of this IFR. The changes will allow FEMA flexibility to provide financial assistance to applicants for the installation or

[341] Disaster Recovery Reform Act of 2018, Pub. L. 115–254, 132 Stat. 3448 (Oct. 5, 2018), 42 U.S.C. 5174 (c)(1)(B).

[342] The DRRA added authorization for FEMA to lease and repair property impacted by a major disaster.

[343] See page 109 of IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

[344] Page 107 of IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

[345] Page 109 of IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

construction of real property items that were not present in the home prior to the disaster. Specifically, these changes will allow IHP to expand its existing policy, which provides for the installation of ADA related real property to applicants with disaster-caused needs, to include Home Repair Assistance for disaster survivors with pre-existing, pre-disaster needs for accessibility-related items, such as an exterior ramp, grab bars, etc., that make their home safe and functional when any level of disaster-caused real property damage occurs to the primary residence.

In new § 206.113(a)(9), FEMA states that FEMA may provide assistance with respect to home repair for accessibility-related items, if an applicant meets the following conditions: (i) the applicant is either an individual with a disability as defined in 42 U.S.C. 5122 whose disability existed prior to the disaster and whose primary residence was damaged by the disaster, or an individual with a disability as defined in 42 U.S.C. 5122 whose disability was caused by the disaster and whose primary residence was damaged by the disaster; (ii) the real property component is necessary to meet the accessibility-related need of the household; and (iii) the real property component is not covered by insurance or any other source.

Via information collection 1660–0002, we are adding a documentation requirement to tie the need for the home repair accessibility-related items: ramp, grab bars, and/or paved pathway to the pre-existing disability to meet the household's access and functional need. We are requiring that a medical, health care, or rehabilitation professional certify whether or not this is necessary; as, they have the expertise to make that determination or, we will accept prior medical, health care, or rehabilitation professional documentation that supports the need for the accessibility-related items. FEMA requests comment on whether this is the appropriate level of documentation needed to confirm the necessity of accessibility-related items or if FEMA should pursue less burdensome documentation requirements.

FEMA makes the below changes to Home Repair Assistance to adjudicate four RFI comments,[346] so that FEMA may make the dwelling safe/sanitary for pre-disaster disabled applicants. For example, this change will allow FEMA to reimburse pre-disaster disabled applicants for accessibility items, such as grab bars and access ramps, if the primary residence sustained disaster damage regardless of whether or not the applicant had grab bars or access ramps pre-disaster. If the dwelling was not touched by the disaster, it will not be eligible for repair assistance; therefore, the applicant will not be able to apply for Home Repair Assistance for their pre-existing, pre-disaster needs for accessibility-related items, such as an exterior ramp, grab bars, etc., that make their home safe and functional.

In § 206.117(b)(2)(ii)(H), FEMA states that FEMA may provide financial assistance for eligible hazard mitigation measures. This is consistent with current § 206.117(b)(2)(ii)(H), except for FEMA removing the phrase ''items or services determined to be'' for clarity, as FEMA never defined what ''items or services'' meant in context of mitigation measures and the removing of the phrase ''that reduce the likelihood of future damage to the residence, utilities, or infrastructure'' as that is now part of the defined term ''Eligible hazard mitigation measures.''

In the first sentence of § 206.117(b)(2)(iii), FEMA states that FEMA financial assistance for the repair of disaster damage will be limited to repairs of quality necessary for a safe and sanitary living or functioning condition. This is not consistent with current § 206.117(b)(2)(iii), as FEMA has changed its position regarding pre-existing conditions. Rather, FEMA now repairs the home to a safe and sanitary living or functioning condition to align with the ''functioning condition'' provision listed in 42 U.S.C. 5174 (c)(2)(A)(i) of the Stafford Act.

In the second sentence of § 206.117(b)(2)(iii), FEMA states that in some instances, when the extent of the damage is unclear, FEMA may provide assistance for the average cost of a licensed technician's professional assessment. The second sentence of § 206.117(b)(2)(iii) is new regulatory text which indicates that FEMA may pay for the average cost of a licensed technician's professional assessment in some situations when the extent of the damage is unclear. While that situation has typically presented itself when FEMA is considering providing assistance for damages to more complex items that affect the habitability of the home, like furnaces, wells, septic systems, roads, bridges, or retaining walls, there may be other situations in which we will need that kind of assessment. So, FEMA has left § 206.117(b)(2)(iii) general to allow for flexibility.

Currently, under page 86 of the IAPPG 1.1, FEMA lists that for wells, furnaces, and septic systems, FEMA may provide assistance or reimbursement for the cost of a licensed technician's professional assessment associated with the repair or replacement of those components. Additionally, when verifiable receipts or estimates are submitted on appeal, FEMA may pay up to the actual cost of the receipt or estimate for wells, furnaces, and septic systems. Thus, the new regulatory text for the second sentence of § 206.117(b)(2)(iii), will codify FEMA's policy and practice, in place since 2000, of providing assistance for the average cost of a licensed technician's professional assessment.

In the third sentence of § 206.117(b)(2)(iii), FEMA states that FEMA may provide for the replacement of a component if repair is not feasible. This is consistent with the fourth sentence of current § 206.117(b)(2)(iii), except for FEMA adding an ''a'' after ''of'' for clarity and replacing ''components'' with ''component'' for grammar purposes.

FEMA removes the current § 206.117(b)(2)(iv) that states that components that were functional immediately before the declared event may be eligible for repair assistance if the damage to the component was caused by the disaster and the component is no longer functional. The reason for the removal is FEMA's policy change. In this IFR, FEMA will provide assistance to repair or replace a disaster-damaged component, room, or area as long as the dwelling incurred disaster damage, including damage that was exacerbated by the disaster and requires repair or replacement to make the home habitable. If the dwelling was not touched by the disaster, it will not be eligible for repair assistance.

In § 206.117(b)(2)(iv), FEMA states that eligible individuals or households may receive up to the maximum amount of assistance (See § 206.110(b)) to repair damage to their primary residence irrespective of other financial resources, except insurance proceeds. This sentence is consistent with the current § 206.117(b)(2)(v), except for FEMA removing the italicization of ''See'' to correct a formatting error, removing ''of this part'' as to conform with the *Federal Register Document Drafting Handbook* regarding cross-referencing, and revising ''damages'' to ''damage'' for clarity.

Section 206.117(b)(2)(v) is consistent with current § 206.117(b)(2)(vi), except for the change to the paragraph structure.

[346] FEMA–2021–0011–0152, FEMA–2021–0011–0164, FEMA–2021–0011–0235, and FEMA–2021–0011–0261.

In the first sentence of § 206.117(b)(2)(vi), FEMA states that if the applicant disputes a determination made by FEMA regarding eligibility for repair assistance, the applicant may appeal that determination pursuant to the procedures in § 206.115. This is consistent with current § 206.117(b)(2)(vii), except for changing the paragraph structure and removing of ''of this part.'' The removal of ''of this part'' is to conform with the *Federal Register Document Drafting Handbook* regarding cross-referencing.

In the second sentence of § 206.117(b)(2)(vi), FEMA states that in addition to the requirements in § 206.115, the applicant must provide proof that the component meets the requirements of paragraph (b)(2)(i) of § 206.117. This sentence is consistent with the second sentence of current § 206.117(b)(2)(vii), except for FEMA removing the clause ''including that the component was functional before the declared event and proof that the declared event caused the component to stop functioning.'' The reason for the clause's removal is that FEMA is making a policy change that only disaster damaged components (regardless of their pre-disaster condition) may receive repair assistance, as FEMA may only pay to restore disaster damage to a safe and sanitary living or functioning condition.

The third sentence of § 206.117(b)(2)(vi) is consistent with current § 206.117(b)(2)(vii), except for the change to the paragraph structure.

In § 206.117(b)(3)(i), FEMA states that FEMA may provide financial assistance for the replacement of an owner-occupied primary residence if: the eligibility criteria in § 206.113 are met; the residence was destroyed by the disaster; and the damage to the residence is not covered by insurance. This sentence is consistent with current § 206.117(b)(3)(i), except for FEMA replacing ''owner's'' with ''owner-occupied'' before ''primary residence;'' removing ''of this part'' from current § 206.117(b)(3)(i)(A) for consistency; removing the current § 206.117(b)(3)(i)(B), which states that the residence was functional immediately before the disaster; removing the following clause from the current § 206.117(b)(3)(i)(C) ''and the damage was caused;'' removing the current § 206.117(b)(3)(i)(E), which states that repair is not feasible, will not ensure the safety or health of the occupant, or will not make the residence functional; and removing the current § 206.117(b)(3)(i)(F), which states that replacement is necessary to ensure the safety or health of the occupant. These additions align with the policy changes that the residence does not have to be functional immediately before the disaster and that all of the damage to the residence need not have been caused by the disaster since FEMA is paying for pre-existing damage.

In the first sentence of § 206.117(b)(3)(ii), FEMA replaces the first sentence with the second sentence of current § 206.117(b)(3)(ii), except for FEMA removing the italicization of ''See'' to correct a formatting error and removing ''of this part'' for consistency. FEMA is removing the first sentence of current § 206.117(b)(3)(ii), which states that all replacement assistance awards must be approved by the Regional Administrator or his/her designee to ensure continued consistency in processing across disasters at the national level.

In § 206.117(b)(3)(iii), FEMA states that housing replacement assistance will be based on the average replacement cost established by FEMA for the type of residence destroyed, or the statutory maximum (See § 206.110(b)), whichever is less. This sentence is consistent with current § 206.117(b)(3)(iii), except for FEMA replacing ''verified disaster related level of damage to the dwelling'' with ''average replacement cost established by FEMA for the type of residence destroyed'' and removing ''of this part'' for consistency. FEMA's clarifying revisions are to help the public understand that since FEMA has already said that the residence must be destroyed or cannot be repaired, that FEMA will pay replacement assistance based on the average replacement cost established by FEMA for the type of residence destroyed.

In the first sentence of § 206.117(b)(3)(iv), FEMA states that if the applicant disputes a determination made by FEMA regarding eligibility for replacement assistance, the applicant may appeal that determination pursuant to the procedures in § 206.115. This sentence is consistent with the current first sentence of § 206.117(b)(3)(iv), except for FEMA removing ''of this part'' to conform with the *Federal Register Document Drafting Handbook* regarding cross-referencing.

In the second sentence of § 206.117(b)(3)(iv), FEMA states that in addition to the requirements in § 206.115, the applicant must provide proof that repair is not feasible, or will not ensure the safety or health of the occupant. This sentence is consistent with the current second sentence of § 206.117(b)(3)(iv), except for FEMA removing the clause ''or make the residence functional'' based on the policy changes that FEMA has previously discussed in this IFR that the residence no longer has to be functional pre-disaster.

In § 206.117(b)(4)(i)(A), FEMA states that FEMA may provide financial or direct assistance to applicants for the purpose of constructing permanent and semi-permanent housing if the eligibility criteria in § 206.113 are met. This is consistent with current § 206.117(b)(4)(i)(A), except for FEMA removing ''of this part'' to conform with the *Federal Register Document Drafting Handbook* regarding cross-referencing.

In § 206.117(b)(4)(i)(B), FEMA deletes the current § 206.117(b)(4)(i)(B), which states that the residence was functional immediately before the declared event, based upon the policy changes that the residence no longer has to be functioning immediately before the declared event.

Section 206.117(b)(4)(i)(B) through (D) is consistent with current § 206.117(b)(4)(i)(C) through (E), except for changing the paragraph structure.

In § 206.117(b)(4)(i)(E), FEMA states that FEMA may provide financial or direct assistance to applicants to construct permanent and semi-permanent housing if the residence is in a location where alternate housing resources are not available and the types of financial or direct temporary housing assistance described in paragraph § 206.117(b)(1), (2), and (3) are unavailable, infeasible, or not cost-effective. This is consistent with current § 206.117(b)(4)(i)(F), except for FEMA removing ''located'' as it is repetitive and replacing the phrase ''an insular area outside the continental United States or in another'' with ''a'' before ''location'' as a simplifying edit for clarity. There is no reason to include the phrase, as the point of the sentence is that the residence is in a location where no alternative housing resources are available.

In the first sentence of § 206.117(b)(4)(iii), FEMA states that if the applicant disputes a determination made by FEMA regarding eligibility for construction assistance, the applicant may appeal that determination pursuant to the procedures in § 206.115. This is consistent with the first sentence in current § 206.117(b)(4)(iii), except for FEMA removing ''of this part'' to conform with the *Federal Register Document Drafting Handbook* regarding cross-referencing.

In the second sentence of § 206.117(b)(4)(iii), FEMA states that in addition to the requirements in § 206.115, the applicant must provide proof that the property is in a location where alternative housing resources are

not available. This is consistent with current § 206.117(b)(4)(iii), except for FEMA removing the phrase ''either located in an insular area outside the continental United States or'' as a simplifying edit for clarity. There is no reason to include the phrase as the point of the sentence is that the residence is in a location where no alternative housing resources are available.

I. Section 206.118—Disposal of Housing Units

In § 206.118(a) through (1), FEMA states that FEMA may sell temporary housing units purchased under § 206.117(b)(1)(ii), Temporary housing, direct assistance, as follows: sale to an occupant. This is consistent with the current § 206.118(a) through (1), except for FEMA adding ''temporary'' before ''housing units'' for clarity and replacing ''applicant'' with ''occupant'' for clarity in reference to those who attempt to purchase the temporary housing unit they occupy during their period of FEMA individual assistance.

In § 206.118(a)(1)(i), FEMA states that FEMA may sell a temporary housing unit to the occupant, if they lack permanent housing and have a site that complies with local codes and ordinances and 44 CFR part 9. This is consistent with the current § 206.118(a)(1)(i), except for FEMA replacing ''sale'' with the clause ''FEMA may sell a temporary housing unit;'' replacing ''individual or household'' with ''occupant;'' removing ''occupying the unit;'' replacing ''the occupant'' with ''they;'' replacing ''lacks'' with ''lack'' for grammar purposes; replacing the ''comma'' after ''permanent housing'' with ''and;'' and replacing ''has'' with ''have'' for grammar purposes. These changes are for clarity and consistency.

In § 206.118(a)(1)(ii), FEMA removes the paragraph heading ''adjustment to the sales price'' for consistency and to comply with the *Federal Register Document Drafting Handbook,* as the rest of the paragraphs at that level do not have paragraph headings.

In § 206.118(a)(1)(ii), FEMA states that FEMA may approve adjustments to the sales price when selling a temporary housing unit to the occupant if the occupant is unable to pay the fair market value of the temporary housing unit and when doing so is in the best interest of the occupant and FEMA. This is consistent with current § 206.118(a)(1)(ii), except for FEMA adding ''temporary'' before ''housing unit'' for clarity; removing ''of a unit;'' replacing ''purchaser'' with ''occupant'' for consistency and because ''occupant'' is a defined term in § 206.111; replacing ''home or'' with ''temporary housing unit;'' and replacing ''applicant'' with ''occupant'' for consistency.

In § 206.118(a)(1)(iii), FEMA states that FEMA may sell a temporary housing unit to the occupant only on the condition that the purchaser agrees to obtain and maintain hazard insurance, as well as flood insurance on the temporary housing unit if it is or will be in a designated Special Flood Hazard Area. This is consistent with current § 206.118(a)(1)(iii), except for FEMA adding ''temporary'' before ''housing unit'' and ''temporary housing'' before ''unit'' for consistency.

In § 206.118(a)(2), FEMA replaces a colon with a period for grammar purposes. In the first sentence of § 206.118(a)(2)(i), FEMA states that FEMA may sell, transfer, donate, or otherwise make a temporary housing unit available directly to a State or other governmental entity, or to a voluntary organization, for the sole purpose of providing temporary housing to eligible displaced applicants in major disasters and emergencies. This is consistent with the first sentence of current § 206.118(a)(2)(i), except for FEMA adding ''temporary housing'' before ''unit'' for consistency and replacing ''disaster victims'' with ''eligible displaced applicants'' for consistency and clarity.

In § 206.118(a)(2)(i)(B), FEMA states that the State, governmental entity, or voluntary organization must agree to obtain and maintain hazard insurance on the temporary housing unit, as well as flood insurance if the housing unit is or will be in a designated Special Flood Hazard Area. This is consistent with current § 206.118(a)(2)(i)(B), except for FEMA adding ''temporary housing'' before ''unit'' for consistency.

In § 206.118(a)(2)(ii), FEMA states that FEMA may also sell temporary housing units at a fair market value to any other person. This is consistent with current § 206.118(a)(2)(ii), except for FEMA adding ''temporary'' before ''housing units'' for consistency.

In the first sentence of § 206.118(b), FEMA states that a temporary housing unit will be sold ''as is, where is,'' except for repairs FEMA deems necessary to protect health or safety, which are to be completed before the sale. This is consistent with current § 206.118(b), except for FEMA adding ''temporary housing'' before ''unit'' for consistency.

In the third sentence of § 206.118(b), FEMA states that in addition, FEMA will inform the purchaser that they may have to bring the installation of the temporary housing unit up to codes and standards that are applicable at the proposed site. This is consistent with the third sentence of § 206.118(b), except for FEMA replacing ''he/she'' with ''they'' and for adding ''temporary housing'' before ''unit'' for consistency. Plus, we are making these changes for clarity; as FEMA has always meant ''temporary housing unit'' when we used ''unit'' and FEMA has always meant that the installation of the temporary housing unit has to be up to codes and standards.

J. Section 206.119—Financial Assistance To Address Other Needs

In § 206.119(a), FEMA states that FEMA and the State may provide financial assistance to individuals and households who are adversely affected by a major disaster and have other verifiable, documented disaster-related necessary expenses or serious needs. This is consistent with current § 206.119(a), except for FEMA adding the clause ''are adversely affected by a major disaster and'' after ''households who'' for clarity; adding ''verifiable, documented'' before ''disaster-related'' for clarification; and removing the current second sentence of § 206.119(a) and removing the current subparagraphs (a)(1) through (3) which state that to qualify for assistance under § 206.119, an applicant must also: apply to the United States Small Business Administration's (SBA) Disaster Home Loan Program for all available assistance under that program; and be declined for SBA Disaster Home Loan Program assistance; or demonstrate that the SBA assistance received does not satisfy their total necessary expenses or serious needs arising out of the major disaster. FEMA removes the above-mentioned regulatory text, as the removal of the designation of ''SBA-dependent ONA'' allows FEMA to provide all eligible applicants ONA regardless of loan repayment worthiness.

This aligns with the goal of the 2022–2026 FEMA Strategic Plan to instill equity as a foundation of emergency management by removing barriers to FEMA programs through a people first approach and achieving equitable outcomes for those we serve.[347] The historically low percentage of applicants with SBA-dependent needs identified at inspection who choose to apply for and accept an SBA loan for these needs

[347] Strategic Goal 3.1 2018–2022 FEMA Strategic Plan was to reduce the complexity of FEMA and to streamline the disaster survivor and grantee experience, which also would be furthered by these changes. The IFR also aligns with the 2022–2026 FEMA Strategic Plan, Goal 2: Lead whole of community in climate resilience; and Goal 3: Promote and sustain a ready FEMA and prepared Nation.

indicates a gap in the correct recovery process which this change would address. This also assists the IA Division in responding to GAO 20–503 on FEMA's Individuals and Households Program.[348] This solution will also simplify applicant messaging for both FEMA and the SBA.

FEMA is removing the SBA requirement in order to streamline the application process and ensure all applicants can access assistance. However, we also recognize that doing so would allow applicants who might otherwise qualify for an SBA loan to instead receive a grant, thus increasing the cost of disaster assistance from the Disaster Relief Fund and reducing the potential for repayment of assistance. FEMA specifically seeks comment on the removal of the requirement to apply to the SBA to qualify for certain categories of assistance under ONA and whether FEMA should seek statutory authority for alternative ways to ensure higher income applicants first pursue SBA loans for this and other categories of assistance. From § 206.119(b) onward, FEMA reorganizes the order of the types of assistance to first cover the two new types of assistance: serious needs and displacement. FEMA states that the new types of assistance should go first as they are first in the delivery sequence and these two types of assistance have specific registration deadlines. FEMA also employees new paragraph headings of ''Serious needs'' and ''Displacement'' at § 206.119(b)(1) and § 206.119(b)(2), respectively.

In § 206.119(b)(1), FEMA states that serious needs assistance is the necessary expenses to assist applicants who report they are displaced as a result of the disaster, who report a need for shelter as a result of the disaster, or who have other emergency disaster expenses. These needs will vary according to each applicant and FEMA will not require receipts documenting the use of this assistance. FEMA will adjust the amount of this assistance to reflect changes in the CPI for all Urban Consumers that the Department of Labor publishes.

In § 206.111, FEMA revises the definition of *displaced applicant* to mean one whose disaster-damaged primary residence is uninhabitable, inaccessible, or made unavailable by the landlord. All that is required by ONA is that the applicant is adversely affected by a disaster. In the ONA revisions at § 206.119(b)(1), an applicant does not have to be displaced to receive the serious needs assistance which is why we did not limit the new serious needs to displaced applicants.

In § 206.119(b)(2), FEMA states that displacement assistance is the necessary expenses to assist displaced applicants with short-term living arrangements immediately following a disaster. Applicants must have registered within the 60-day or extended registration period. The award amount is based on a time period established by FEMA and approved in the State Administrative Option, as required by § 206.120(b). FEMA will not require receipts documenting the use of this assistance.

In § 206.119(b)(2), FEMA states the difference between lodging expense reimbursement and displacement assistance. Section 206.119(b)(2) does not require receipts for the new displacement assistance; while, lodging expense reimbursement does require receipts. Also, the new displacement assistance refers to the revised term *displaced applicant* which means one whose disaster-damaged primary residence is uninhabitable, inaccessible, or made unavailable by the landlord. By contrast, lodging expense reimbursement is for individuals or households who have not received displacement assistance under this section.

In § 206.119(b)(3), FEMA revises the paragraph heading to *Medical and dental.* This paragraph heading is consistent with the current § 206.119(c)(3), paragraph heading except for FEMA removing ''expenses'' and adding ''and dental.'' By changing the format of the paragraph headings in this section, FEMA is adding consistency in how each type of assistance is referred to.

Also, in § 206.119(b)(3), when describing eligible medical and dental assistance, FEMA states necessary expenses to assist applicants with medical and dental costs, which may include the following: medical service costs; dental service costs; repair or replacement of medical or dental equipment; loss or injury of a service animal; and costs for prescription medicines related to eligible medical or dental services, or which need to be replaced due to the disaster. This sentence is consistent with current § 206.119(c)(3), except for FEMA replacing ''medical'' with ''necessary'' before ''expenses'' for clarity; adding the clause ''to assist applicants with medical and dental costs which'' after ''expenses'' for clarity; removing ''are generally'' and ''limited to'' and adding ''may include'' for clarity; adding ''service'' between ''medical costs'' and ''dental costs'' for clarity and consistency; adding ''or dental'' before ''equipment;'' and adding the following new language ''loss or injury of a service animal; and costs for prescription medicines related to eligible medical or dental services, or which need to be replaced due to the disaster'' for clarity. FEMA currently covers the loss of prescription drugs in Chapter 3: VI.B.*2.* of the IAPPG 1.1,[349] so it was not essential that we added the regulatory text, but we did so for clarity that these eligible costs may include medical services and prescription drugs. Currently, in Chapter 3: VI.B.*2.* of IAPPG 1.1 [350] FEMA interprets current § 206.119(c)(3)(iii) to include service animals. For clarity we are adding ''loss or injury of a service animal.''

In § 206.119(b)(4), FEMA adds a paragraph heading of ''child care.'' This is a new paragraph with a new paragraph heading. Currently, FEMA does not have child care expenses ONA regulations.

In § 206.119(b)(4), FEMA states that child care assistance is for necessary expenses to assist applicants with child care costs, which may include the following: standard child care service fees, including personal assistance services that support activities of daily living for children with disabilities and registration and health inventory fees for applicants who require a new child care provider. FEMA adds child care expenses under ONA; as section 1108 of SRIA [351] established child care as an eligible expense under the ONA provision of the IHP.[352] This is a codification of a current existing policy and practice, as, currently FEMA implements child care assistance through the IAPPG 1.1.[353]

Currently, § 206.119(c)(4) paragraph heading is ''funeral expenses.'' In § 206.119(b)(5), FEMA changes the paragraph heading to ''funeral'' for

[348] GAO 20–503 touched on the confusion created by the current regulatory requirement that applicants apply for an SBA disaster loan prior to being considered for SBA-dependent ONA. The GAO made a formal recommendation that the FEMA Administrator should assess the extent to which its process for determining an applicant's eligibility for SBA-dependent other needs assistance limits or prevents survivors' access to IHP assistance, and work with SBA to identify options to simplify and streamline the disaster assistance application process for survivors.

[349] See page 153 of IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

[350] See page 153 of IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

[351] 42 U.S.C. 5174(e)(1).

[352] Initially, the Recovery Policy, Disaster Assistance for Child Care 9461.1, Jan. 17, 2014, was the controlling policy. *https://www.fema.gov/sites/default/files/2020-07/recovery-policy_disaster%20assistance-child-care.pdf.*

[353] See pages 155–160, Child Care Assistance, of IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

consistency with the other paragraph headings at that paragraph level.

In § 206.119(b)(5), FEMA states that funeral assistance is necessary expenses to assist applicants with funeral costs, which may include the following: funeral services; burial or cremation; and other related funeral expenses. This is consistent with the current § 206.119(c)(4), except for FEMA replacing ''funeral'' with ''necessary'' before ''expenses'' for clarity, adding the clause ''to assist applicants with funeral costs which'' after ''expenses'' for clarity, removing ''are generally limited to'' and adding ''may include'' for clarity and to parallel the language in § 206.119(b)(3).

In § 206.119(b)(6), when describing eligible personal property assistance, FEMA includes necessary expenses to assist applicants whose primary residences were damaged by the disaster with personal property costs, which may include the following: clothing; household items, furnishings or appliances; computing devices; essential tools, specialized or protective clothing, computing devices, and equipment required for employment; computing devices, uniforms, schoolbooks and supplies required for educational purposes; and cleaning or sanitizing any eligible personal property item.[354] This is consistent with the current § 206.119(c)(1), except for FEMA replacing ''and serious needs for repair or replacement of'' with ''to assist applicants whose primary residences were damaged by the disaster with'' after ''necessary expenses'' for clarity, adding ''costs'' after ''personal property'' for clarity, replacing ''are generally limited to'' with ''may include'' before the ''the following'' for clarity and to parallel the language in § 206.119(b)(3), adding a new subparagraph (iii) which includes ''computing devices'' to provide additional assistance under ONA personal property for one household computing device not related to employment or education, adding ''Essential'' before ''tools'' as FEMA adds a new definition of ''Essential tools'' in § 206.111, adding ''computing devices'' after ''protective clothing,'' to allow them as eligible costs if the computing devices are for employment, replacing the phrase ''by an employer as a condition of'' with ''for'' before ''employment'' to reflect FEMA's policy change regarding self-employed essential tools; and replacing ''computers'' with ''computing devices'' in 206.119(b)(6)(iv) for consistency since we are replacing ''computers'' with ''computing devices'' in the other subparagraphs in 206.119(b)(6).

While FEMA had previously provided assistance for damaged computers, it was limited to those computers that were required for educational purposes or as a condition of employment. Recognizing that technology continues to have an increasing role in how households communicate, manage finances, and facilitate many other necessary aspects of daily living, FEMA, via IHP, is expanding Personal Property Assistance so that a household may receive financial assistance for a disaster damaged computing device, regardless of its intended use. Applicants may receive financial assistance for additional damaged computing devices that are needed for educational purposes or as a condition of employment, to include self-employed individuals.

In § 206.119(b)(6), FEMA clarifies that the personal property was in a pre-disaster primary residence in a declared disaster area when FEMA adds the clause ''to assist applicants whose primary residences were damaged by the disaster.''

The paragraph heading § 206.119(b)(7) is the same as current § 206.119(c)(2), except for the change to the paragraph structure.

In § 206.119(b)(7), when describing eligible transportation assistance, FEMA states that FEMA and the State may provide financial assistance to individuals and households including necessary expenses to assist applicants with transportation costs, which may include the following: repairing or replacing vehicles; public transportation; and other transportation related costs or services. This is consistent with the current § 206.119(c)(2), except for FEMA removing ''or serious needs'' after ''necessary expenses'' and removing ''for'' before ''transportation'' for clarity; adding the clause ''to assist applicants with'' before ''transportation'' and adding ''costs'' after ''transportation'' for clarity; removing ''are generally limited to'' and adding ''which may include'' before ''the following'' for clarity and to parallel the language in § 206.119(b)(3); and removing ''and'' in current § 206.119(c)(2)(i), removing ''financial assistance for'' before ''public,'' removing ''any;'' moving the clause ''other transportation related costs or services'' from current § 206.119(c)(2)(ii) to § 206.119(b)(7)(iii).

The heading of § 206.119(b)(8) addresses moving and storage. This is consistent with current § 206.119(c)(5), except the heading does not include ''expenses.'' In § 206.119(b)(8), when describing eligible moving and storage assistance, FEMA states that FEMA and the State may provide financial assistance to individuals and households including necessary expenses to assist applicants whose primary residences were damaged by the disaster with costs related to moving and storing personal property, which may include the following: moving and storing personal property to avoid additional disaster damage; storage of personal property while disaster-related repairs are being made to the primary residence; and return of the personal property to the individual or household's primary residence. This is consistent with current § 206.119(c)(5), except for FEMA reorganizing this paragraph to include three subparagraphs so that it follows the format of the other paragraphs in this section. Also, § 206.119(b)(8), removes ''and serious needs'' after ''necessary expenses,'' and adds the clause ''to assist applicants whose primary residences were damaged by the disaster with costs'' before ''related to moving and storing personal property'' for clarity and replaces ''generally'' with ''may.''

In § 206.119(b)(9), the paragraph heading is Group Flood Insurance purchase, which is consistent with the current paragraph heading at § 206.119(d), except for the paragraph structure. Since Group Flood Insurance is a type of assistance, it should be listed with the other types of assistance listed in § 206.119(b) instead of, as currently stands, its own separate paragraph. In § 206.119(b)(9), FEMA states that individuals identified by FEMA as eligible for assistance for flood insurable damage under the Stafford Act, 42 U.S.C. 5174, as a result of flood damage caused by a Presidentially-declared major disaster and who reside in a special flood hazard area (SFHA) may be included in a Group Flood Insurance Policy (GFIP) established under the National Flood Insurance Program (NFIP) regulations at 44 CFR 61.17. This sentence is consistent with current § 206.119(d), except for FEMA replacing ''Other Needs assistance'' with ''assistance for flood insurable damage'' for clarity; removing ''section 408 of'' and adding ''42 U.S.C. 5174'' for clarity and public ease of reference.

The first sentence of § 206.119(b)(9)(i) is consistent with the current first

[354] When the damages are not captured at inspection, an applicant must provide: an itemized receipt, estimate, or bill for repair or replacement of the disaster-damaged items; a written statement signed by the applicant verifying that the items were disaster-damaged and the written statement includes: ''I declare under penalty of perjury that the information I provided is true and correct.''

sentence of § 206.119(d)(1), except for the paragraph structure. Currently, the first sentence of § 206.119(d)(1), states that the premium for the GFIP is a necessary expense within the meaning of § 206.119. In the second sentence of § 206.119(b)(9)(i), FEMA states that FEMA or the State must withhold this portion of the Other Needs award and provide it to the NFIP on behalf of individuals and households who are eligible for coverage. This is consistent with the current second sentence of § 206.119(d)(1), except for FEMA replacing ''shall'' for ''must'' for purposes of plain language. In the third sentence of § 206.119(b)(9)(i), FEMA states that the coverage must be equivalent to the maximum assistance amount established under the Stafford Act, 42 U.S.C. 5174. The is consistent with the current third sentence of § 206.119(d)(1), except for FEMA replacing ''shall'' with ''must'' for purposes of plain language and removing ''section 408 of'' and adding ''42 U.S.C. 5174'' for clarity and public ease of reference.

In the first sentence of § 206.119(b)(9)(ii), FEMA states that FEMA or the State IHP staff must provide the NFIP with records of individuals who received assistance for flood-insurable losses within a SFHA and are to be insured through the GFIP. This is consistent with the current first sentence of § 206.119(d)(2), except for FEMA replacing ''shall'' with ''must'' for purposes of plain language and replacing ''an ''Other Needs'' award'' with ''assistance for flood-insurable losses within a SFHA'' for clarity. In the second sentence of § 206.119(b)(9)(ii), FEMA states that records of applicants to be insured must be accompanied by payments to cover the premium amounts for each applicant for the 3-year policy term. This is consistent with the current second sentence of § 206.119(d)(2), except for FEMA removing ''Other Needs'' for clarity and replacing ''shall'' with ''must'' for purposes of plain language. The third and fourth sentences in § 206.119(b)(9)(ii) are consistent with the third and fourth sentences in the current § 206.119(d)(2).

Section 206.119(b)(9)(iii) is consistent with current § 206.119(d)(3), except for the paragraph structure.

In § 206.119(b)(10), when describing eligible miscellaneous assistance, FEMA states that FEMA may provide assistance for other miscellaneous items or services that FEMA, in consultation with the State, determines are necessary expenses and serious needs. Section 206.119(b)(10) is consistent with current § 206.119(c)(6)(ii), except for FEMA adding a paragraph heading of ''Miscellaneous'' to § 206.119(b)(10). This last paragraph for section 206.119 serves as a ''catch all'' for types of assistance under the necessary expenses and serious needs provisions of the Stafford Act.

K. Section 206.131—Individual and Family Grant Program for Major Disasters Declared on or Before October 14, 2002

On September 30, 2002, FEMA issued regulations on the then-new Individuals and Households Program. The rule implemented the DMA2K and added §§ 206.110–120 to subpart D of part 206 of FEMA's regulations. The previous regulations, relating to the superseded Individual and Family Grant Program, were retained in § 206.131, but revised to apply only to disasters declared before October 15, 2002, the effective date of the new Individuals and Households Program regulations. Since these old regulations are now outdated and no longer necessary, FEMA removes and reserves § 206.131. Sections 206.132 through 206.140 are currently reserved, so removing and reserving § 206.131 extends the existing reservation to §§ 206.131–140.

Since FEMA is removing § 206.131 and reserving § 206.131, FEMA also is revising the Subpart E—heading from ''Individual and Family Grant Programs' to ''Reserved'' for clarity.

L. Section 206.191—Duplication of Benefits

In the first sentence of § 206.191(a), FEMA states that § 206.191 establishes the policies for implementing the Stafford Act, 42 U.S.C. 5155, entitled Duplication of Benefits. This sentence is consistent with current § 206.191(a), except for FEMA removing ''section 312 of'' and adding ''42 U.S.C. 5155'' after ''the Stafford Act.'' FEMA makes these edits for public ease of reference, as a United States Code cite is more accessible to the public and referencing the section of the Stafford Act just increases the length of the regulation.

In the first sentence of § 206.191(b)(1), FEMA states that Federal agencies providing disaster assistance under the Act or under their own authorities triggered by the Act, must cooperate to prevent and rectify duplication of benefits, according to the general policy guidance of the Federal Emergency Management Agency. This sentence is consistent with the first sentence of current § 206.191(b)(1), except for FEMA replacing ''shall'' with ''must'' for purposes of plain language.

In the second sentence of § 206.191(b)(1), FEMA states that the agencies must establish appropriate agency policies and procedures to prevent duplication of benefits. This sentence is consistent with the second sentence of current § 206.191(b)(1), except for FEMA replacing ''shall'' with ''must'' for purposes of plain language.

In § 206.191(d)(2), FEMA states that the delivery sequence is, in order of delivery: volunteer agencies' emergency assistance (except expendable items such as clothes, linens, and basic kitchenware); insurance (including flood insurance); housing assistance pursuant to the Stafford Act, 42 U.S.C. 5174; Other Needs assistance, pursuant to the Stafford Act, 42 U.S.C. 5174; Small Business Administration and Department of Agriculture disaster loans; Volunteer agencies' ''additional assistance'' programs; and the ''Cora Brown Fund.'' This is consistent with current § 206.191(d)(2), except for FEMA removing the Stafford Act section cites and replacing them with United States Code cites, which are more accessible to the public and switching the delivery sequence, so that FEMA disaster survivors do not have to go to SBA before seeking ONA assistance from FEMA. Also, FEMA removes ''Farmers Home Administration'' and replaces it with ''Department of Agriculture'' since the Farmers Home Administration is now administered by the successor agencies of the Farmers Home Administration, so the ''Farmers Home Administration disaster loans'' are now the ''Department of Agriculture disaster loans.''

In the first sentence of § 206.191(d)(4), FEMA states that if following the delivery sequence concept would adversely affect the timely receipt of essential assistance by an individual or household, an agency may offer assistance which is the primary responsibility of another agency. This sentence is consistent with current § 206.191(d)(4), except for FEMA replacing ''a disaster victim'' with ''an individual or household'' for consistency and clarity.

In the § 206.191(d)(4)(ii), FEMA states that in the case where the individual or household has refused assistance from Agency A, Agency A must notify Agency B that it must recover assistance previously provided. This sentence is consistent with current § 206.191(d)(4)(ii), except for FEMA replacing ''disaster victim'' with ''individual or household'' for consistency and adding the clarifying phrase ''Agency A must'' before ''notify Agency B.''

In § 206.191(e)(1)(i), FEMA states that in making an eligibility determination, FEMA, in the case of federally operated

programs, or the State, in the case of State operated programs, must determine whether assistance is the primary responsibility of another agency to provide, according to the delivery sequence; and determine whether that primary response agency can provide assistance in a timely way. This sentence is consistent with current § 206.191(e)(1)(i), except for FEMA revising ''the FEMA Regional Administrator'' to ''FEMA'' for consistency and revising ''shall'' with ''must'' for purposes of plain language.

In § 206.191(e)(2), FEMA states that in making an eligibility determination, FEMA or the State must remind the applicant about his/her responsibility to pursue an adequate settlement. In the second sentence of § 206.191(e)(2)(iii), FEMA states that where flood insurance is involved, FEMA must coordinate with the Federal Insurance Administration. These sentences are consistent with current § 206.191(e)(2) and the second sentence of § 206.191(e)(2)(iii), except for FEMA revising ''the FEMA Regional Administrator'' to ''FEMA,'' as the RA is not involved; adding ''the'' before State for grammar purposes; and revising ''shall'' to ''must'' for purposes of plain language.

In the first sentences of § 206.191(e)(3), FEMA states that each disaster assistance agency is responsible for preventing and rectifying duplication of benefits under the general authority of the Stafford Act, 42 U.S.C. 5155. This sentence is consistent with current § 206.191(e)(3), except for FEMA removing the phrase ''the coordination of the Federal Coordinating Officer (FCO) and,'' as field leadership does not coordinate the rectification of duplication of benefits; and revising ''section 312'' to ''the Stafford Act, 42 U.S.C. 5155'' for clarity and public ease of reference.

In the second sentence of § 206.191(e)(3), FEMA states that to determine whether duplication has occurred and established procedures have been followed, FEMA must, within 90 days after the close of the disaster assistance program's application period, for selected disaster declarations, examine on a random sample basis, FEMA's and other government and voluntary agencies' case files and document the findings in writing. This sentence is consistent with the current second sentence of § 206.191(e)(3), except for FEMA replacing ''the Regional Administrator'' with ''FEMA'' for consistency, replacing ''shall'' with ''must'' for purposes of plain language, and replacing ''programs'' with ''program's'' for grammar purposes.

In § 206.191(e)(4), FEMA states that if duplication is discovered, FEMA must determine whether the duplicating agency followed its own remedial procedures. This is consistent with current § 206.191(e)(4), except for FEMA replacing ''the Regional Administrator'' with ''FEMA'' for consistency and replacing ''shall'' with ''must'' for purposes of plain language.

In the first sentence of § 206.191(e)(4)(i), FEMA states that if the duplicating agency followed its procedures and was successful in correcting the duplication, FEMA will take no further action. This is consistent with current first sentence of § 206.191(e)(4)(i), except for FEMA replacing ''the Regional Administrator'' with ''FEMA'' for consistency.

In the second sentence of § 206.191(e)(4)(i), FEMA states that if the agency was not successful in correcting the duplication, and FEMA is satisfied that the duplicating agency followed its remedial procedures, no further action will be taken. This is consistent with the current second sentence of § 206.191(e)(4)(i), except for FEMA replacing ''the Regional Administrator'' with ''FEMA,'' as the RA is not involved.

In the first sentence of § 206.191(e)(4)(ii), FEMA states that if the duplicating agency did not follow its duplication of benefits procedures, or FEMA is not satisfied that the procedures were followed in an acceptable manner, then FEMA must provide an opportunity for the agency to take the required corrective action. This is consistent with the current first sentence of § 206.191(e)(4)(ii), except for FEMA twice replacing ''the Regional Administrator'' with ''FEMA,'' as the RA is not involved and replacing ''shall'' with ''must'' for purposes of plain language.

In the second sentence of § 206.191(e)(4)(ii), FEMA states that if the agency cannot fulfill its responsibilities for remedial action, FEMA must notify the recipient of the excess assistance, and after examining the debt, then as appropriate, take those recovery actions in conjunction with agency representatives for each identified case in the random sample (or larger universe, at FEMA's discretion). This is consistent with the current second sentence of § 206.191(e)(4)(ii), except for FEMA replacing ''the Regional Administrator'' with ''FEMA,'' as the RA is not involved; replacing ''shall'' with ''must'' for purposes of plain language; replacing ''if it is determined that the likelihood of collecting the debt and the best interests of the Federal Government justify taking the necessary recovery actions, then'' with ''then as appropriate,'' and replacing ''the Regional Administrator's'' with ''FEMA's,'' as the RA's discretion is not involved.

In the first sentence of § 206.191(e)(5), FEMA states that when the random sample shows evidence that duplication has occurred and corrective action is required, FEMA must urge the duplicating agency to follow its own procedures to take corrective action, and must work with the agency toward that end. This is consistent with the current first sentence of § 206.191(e)(5), except for FEMA replacing ''the Regional Administrator and the FCO'' with ''FEMA,'' as the RA and the FCO are not involved and replacing ''shall'' with ''must'' for purposes of plain language.

In the second sentence of § 206.191(e)(5), FEMA states that under its authority in the Stafford Act, 42 U.S.C. 5155, FEMA must require the duplicating agency to report to FEMA on the agency's attempt to correct the duplications identified in the sample. This is consistent with the current second sentence of § 206.191(e)(5), except for FEMA replacing ''his/her'' with ''its;'' replacing ''section 312'' with ''the Stafford Act, 42 U.S.C. 5155,'' for clarity and public ease of reference; replacing ''the Regional Administrator'' with ''FEMA,'' as the RA is not involved in duplication of assistance when assistance under other authorities is involved; replacing ''shall'' with ''must'' for purposes of plain language; replacing ''him/her'' with ''FEMA;'' and replacing ''its'' with ''the agency's'' for clarity.

In the first sentence of § 206.191(f), FEMA states that funds due to FEMA are recovered in accordance with the Department of Homeland Security's Debt Collection Regulations (6 CFR part 11—Claims) and the Federal Claims Collection Standards (Department of the Treasury—Department of Justice) (31 CFR chapter IX). This is consistent with the current first sentence of § 206.191(f), except for FEMA adding the follow clause at the end of the sentence ''and the Federal Claims Collection Standards (Department of the Treasury—Department of Justice) (31 CFR chapter IX).'' FEMA is adding the additional cross reference as much of 44 CFR part 11 uses the joint Department of the Treasury (Treasury)/Department of Justice (DOJ) regulations and there are provisions in the Treasury/DOJ regulations that are not addressed in the DHS regulations.

In the second sentence of § 206.191(f), FEMA states that section 1216 of DRRA, 42 U.S.C. 5174a, also provides FEMA the authority to waive debts owed by individuals and households who received assistance under subpart D of part 206. FEMA is adding a new second sentence at § 206.191(f) for clarity and transparency, since section 1216 of the DRRA directs FEMA to (1) waive debt owed by individuals and households who received assistance through the IHP where the assistance was distributed in error by FEMA; and (2) waive debt owed to the United States related to covered assistance that is subject to a claim or legal action, in accordance with section 317 of the Stafford Act, 42 U.S.C. 5160.[355] Waiver is not permitted in either instance if the debt involves fraud, the presentation of a false claim, or misrepresentation by the debtor or any party having an interest in the claim.[356] Due to passage of section 1216 of DRRA, FEMA updated its debt collection processes for Individual Assistance recipients.

In § 206.191(g), FEMA adds a new paragraph heading of ''Severability'' for consistency with standards established by the **Federal Register**. FEMA is adding a new paragraph (g) in § 206.191 stating any provision of § 206.191 held to be invalid or unenforceable as applied to any person or circumstance should be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision of § 206.191 is invalid and unenforceable in all circumstances, in which event the provision should be severable from the remainder of § 206.191 and should not affect the remainder thereof.

A severability clause is a standard legal provision. It indicates FEMA's intent that if a court finds that a specific provision of a rule is unlawful, the court should allow the remainder of the rule to survive. Those provisions that are unaffected by a legal ruling can be implemented by an agency without requiring a new round of rulemaking simply to promulgate provisions that are not subject to a court ruling.

FEMA believes that its authority to implement the provisions of this IFR is well-supported in law and practice and should be upheld in any legal challenge. FEMA also believes that its exercise of its authority reflects sound policy. However, in the event that any portion of the IFR is declared invalid, FEMA intends that the various provisions be severable. The provisions are not so interconnected that the rule's efficacy depends on every one of them remaining in place—implementation of the different provisions is sufficiently distinct that FEMA's aim of increasing equity and easing entry to the IA Program would still be furthered by maintaining the other provisions. For example, if a court were to find unlawful the change to the sequence of delivery in paragraph (d), the remaining provisions of the IFR, such as those on debt waiver in paragraph (f), could still function sensibly and FEMA would still intend them to stand.

V. Regulatory Analyses

A. Administrative Procedure Act

The Administrative Procedure Act [357] (APA) governs the process by which Federal agencies develop and issue regulations. Generally, when an agency promulgates legislative rules, the exercise of that authority is governed by the informal rulemaking procedures outlined in 5 U.S.C. 553, which include publishing notices of proposed rulemaking and providing the opportunity for interested persons to submit comments.[358] However, the APA provides an unqualified exemption for all rules relating to ''public property, loans, grants, benefits, or contracts'' (sometimes also referred to as the ''proprietary exemption'') from the procedural rulemaking requirements of Section 553.[359] The exemption includes ''all federally supported 'subsidy programs' and 'grants-in-aid programs under which the [F]ederal [G]overnment makes payment to [S]tate and local governments' as well as private individuals and entities.'' [360] The exemption covers both narrow ''managerial'' proprietary decisions and broader proprietary ''matters of interpretation and policy.'' [361] The case law interpreting the requirement sets forth a relatively brief framework for analysis: namely, that the exempted subject matters are ''clearly and directly'' implicated in the rulemaking at issue.[362]

As described more fully in the background section, *supra,* this IFR is clearly and directly related to a grant program, the IHP, which authorizes FEMA to provide financial assistance and direct services to individuals and households who, as a direct result of a major disaster, have necessary expenses and serious needs in cases in which the individuals and households are unable to meet such expenses or needs through other means.[363] As such, this rule is exempt from the APA's notice and comment requirement.

However, FEMA did not end its analysis here. FEMA's regulations on rulemaking provide that its general policy is to provide for public participation in rulemaking despite the APA exemption unless it determines that circumstances warrant a departure from that general policy.[364] FEMA identified specific circumstances which warrant such a departure, such as for its annual grant programs which are subject to annual appropriations and potential revisions to their requirements, and more general circumstances, such as situations in which it requires flexibility to adapt quickly to legal and policy mandates. FEMA retained its general policy in favor of public participation in rulemaking.

In light of the increasing climate-related disasters facing the Nation, it is vital to implement these program improvements now to ensure IHP meets the increasing need for assistance to individuals and families recovering from disasters. Some impacts of climate change are already being felt as extreme weather events have increased in

[355] Disaster Recovery Reform Act of 2018, Public Law 115–254, 132 Stat. 3449 (Oct. 5, 2018), as amended by the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Public Law 117–263, 136 Stat. 3404 (Dec. 23, 2022), 42 U.S.C. 5174.

[356] *Id.*

[357] 5 U.S.C. 551 *et seq.*

[358] *See* 5 U.S.C. 553(b) and (c).

[359] *Id.* Section 553(a)(2).

[360] *Sierra Club* v. *Atlanta Reg'l Comm'n,* 255 F. Supp. 2d 1319 (GA N.D. 2002) (citing *STEIN, MITCHELL & MEZINES, ADMINISTRATIVE LAW* § 1502[4][e] (quoting ATTORNEY GENERAL'S MANUAL ON THE APA 27–28 (1947)).

[361] *Alphapointe* v. *Dep't of Veterans Affairs,* 416 F. Supp. 3d (D.D.C. 2019) (*quoting Nat'l Wildlife Fed'n* v. *Snow,* 561 F.2d 227, 231–32 (D.C. Cir. 1976)).

[362] *Humana of S.C., Inc.* v. *Califano,* 191 U.S. App. D.C. 368, 590 F.2d 1070, 1082 (1978) (That the governmental function is not strictly ''proprietary,'' or the regulation's character is not ''mechanical,'' does not curtail Section 553(a)(2)'s permissive effect. Public policy may be sorely affected, and the wisdom of public input manifest, but the statutory exemption still prevails when ''grants,'' ''benefits,'' or other named subjects are ''clearly and directly'' implicated.)

[363] 42 U.S.C. 5174.

[364] 44 CFR 1.3(a) and (c). Until recently, FEMA waived the exemption afforded to grant programs under the APA and treated its programs as if they were subject to traditional notice and comment requirements. On March 3, 2022, FEMA published a final rule clarifying its position regarding notice and comment rulemaking for its grant programs. See 87 FR 11971, Mar. 3, 2022. FEMA determined that removal of the waiver of the exemption streamlined the regulations and ensured that the agency retained the flexibility to utilize a range of public engagement options in advance of rulemaking where appropriate. FEMA noted that it would retain its general policy in favor of public participation in rulemaking but would retain discretion to depart from this policy as circumstances warrant.

intensity as well as frequency,[365] and those impacts will worsen as climate change intensifies in the future.[366] Such impacts have elevated the need for IHP assistance and will continue to require greater efficiency in the delivery of disaster services, particularly for disadvantaged communities, which are disproportionately impacted.[367] This rule increases equity by simplifying processes, removing barriers to entry, and increasing eligibility for certain types of assistance under the program.

FEMA has balanced the need for flexibility to adapt quickly to legal and policy mandates with its general policy favoring public participation in rulemaking. FEMA sought input on regulatory changes to the IHP through an RFI, published on April 22, 2021, seeking public input on its programs, regulations, collections of information, and policies to ensure they effectively achieve FEMA's mission in a manner that furthers the goals of advancing equity for all, including those in underserved communities; bolstering resilience from the impacts of climate change, particularly for those disproportionately impacted by climate change; and environmental justice.[368] FEMA held public meetings and extended the comment period on the RFI to ensure all interested parties had sufficient opportunity to provide comments.[369] Commenters raised equitable concerns that FEMA addressed in this IFR, such as removing the requirement to apply for the SBA for a loan fore receipt of ONA, amending FEMA's habitability standards, increasing assistance for essential tools, simplifying its appeal process, and removing documentation requirements for late registrations.

FEMA has determined, in its discretion,[370] that these circumstances warrant publishing this as an interim final rule, but FEMA is seeking public comment on this rule and will carefully consider each comment received to determine whether further changes to FEMA's IHP regulations are needed.

B. Executive Order 12866, Regulatory Planning and Review, as Amended by Executive Order 14094, Modernizing Regulatory Review; Executive Order 13563, Improving Regulation and Regulatory Review

Executive Orders 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. OMB has designated this rule as a ''significant regulatory action'' as defined under section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094 because its annual effects on the economy exceed $200 million in any year of the analysis. Accordingly, OMB has reviewed it.

This Regulatory Impact Analysis (RIA) provides an assessment of the potential costs, benefits, and transfer payments from this rule under the criteria of Executive Orders 12866 and 13563. This analysis does not attempt to replicate the regulatory language of the rule or any other supporting documentation. FEMA urges the reader to review the rest of this rule in addition to reviewing this analysis. The complete RIA is available in the Docket. The following analysis is a summary of the information contained in the IA Equity RIA document.

FEMA publishes this IFR amending its regulations governing the Individual Assistance program to increase equity by simplifying processes, removing barriers to entry, and increasing eligibility for certain types of assistance under the program. Specifically, the IFR increases eligibility for home repair assistance by amending the definitions and application of the terms safe, sanitary, and functional, allowing assistance for certain accessibility-related items, and amending its approach to evaluating insurance proceeds; allows for the re-opening of the applicant registration period when the President adds new counties to the major disaster declaration; simplifies the documentation requirements for continued temporary housing assistance; simplifies the appeals process; simplifies the process to request approval for a late registration; removes the requirement to apply for a Small Business Administration loan as a condition of eligibility for ONA; and establishes additional eligible assistance under ONA for serious needs, displacement, disaster-damaged computing devices and essential tools for self-employed individuals. FEMA also makes to reflect changes to statutory authority that have not yet been implemented in regulation, to include provisions for utility and security deposit payments, lease and repair of multifamily rental housing, child care assistance, maximum assistance limits, and waiver authority. FEMA is also making several technical changes, codification of existing policy and practice, and non-substantive clarifications to its IA regulations. These changes are addressed in the Marginal Analysis Table that can be found in this document.

[365] See Economic Report of the President at 275 (March 2023), *https://www.whitehouse.gov/wp-content/uploads/2023/03/ERP-2023.pdf.*

[366] See CRS Rep. 46694, Climate Change Adaptation: Department of the Interior, at 1 (2021), available at *https://crsreports.congress.gov/product/pdf/R/R46694;* Maldonado, J., Wang, I.F.C., Eningowuk, F. *et al.* Addressing the challenges of climate-driven, community-led resettlement and site expansion: knowledge sharing, storytelling, healing, and collaborative coalition building. *J. Environ. Stud. Sci.* 11, 294–304 (2021). *https://doi.org/10.1007/s13412-021-00695-0.*

[367] See, *e.g.,* EPA, Climate Change and Social Vulnerability in the United States: A Focus on Six Impacts (September 2021), *https://www.epa.gov/cira/social-vulnerability-report.*

[368] 86 FR 21325, Apr. 22, 2021.

[369] See ''Request for Information on FEMA Programs, Regulations, and Policies; Public Meetings; Extension of Comment Period,'' 86 FR 30326, June 7, 2021.

[370] 42 U.S.C. 5148.

Table 7—Summary of the Impacts of the Changes, No-Action Baseline (2020$)

Category	Summary
Changes	Revise IHP eligibility determinations based on insurance proceeds to help with unmet needs
	Expand application of "safe, sanitary, and functional" for IHP to include pre-existing damage
	Amend CTHA process and timeline for applicants to provide permanent housing plan documents. Also, codify CTHA income threshold of 30 percent of applicant's post-disaster income towards their post-disaster housing costs.
	Remove the requirement to apply for an SBA loan prior to receipt of certain types of ONA
	Establish Serious Needs Assistance and Displacement Assistance
	Simplify IHP appeals process
	Codify Multifamily Lease and Repair, Child Care Assistance, Assistance Use Toward Security Deposit, and IHP Max Cap Removal for Temporary Housing Assistance to incorporate changes from PKEMRA[371], SRIA[372], and DRRA[373].
	Amend IA registration to allow for the reopening of the registration period
	Amend IA late registration to accept verbal explanations for applicant requests
	Expand Home Repair Assistance to include accessibility-related items for applicants who have a disability but had unmet pre-disaster accessibility needs
	Codify Home Repair Assistance for professional assessment when the extent of damage is unclear
	Codify waiver of certain IHP debt
	Expand Personal Property Assistance to provide assistance for disaster-related damages to computing devices for applicants and essential tools used for self-employment
Affected Population	Eligible individuals and households who have uninsured or underinsured necessary expenses and serious needs as a result of a Presidentially-declared disaster, FEMA estimates an average of 340,654 IHP recipients per year
Transfers	FEMA estimates an increase in transfer payments from FEMA and States to recipients[374] of $672 million per year
Costs	FEMA estimates additional costs for States[375], FEMA, and applicants[376] of $5.3 million in the first year, $5.2 million in the second year, and $0.9 million in subsequent years
Cost Savings	FEMA estimates cost savings of $8.0 million per year
Net Costs	FEMA estimates net cost savings of $2.7 million in the first year, $2.8 million in the second year, and $7.1 million in subsequent years
Benefits (quantitative)	None
Benefits (qualitative)	Promote more equitable access to disaster assistance by reducing applicant barriers, improving overall timeliness, and lessening administrative burdens
	Improve clarity and align FEMA regulations with statutory changes improving the efficiency and consistency of IHP disaster assistance

1. Need for Regulation

FEMA provides financial assistance under the HA and ONA provisions of the IHP to eligible individuals and households who have uninsured or underinsured necessary expenses and serious needs. In alignment with Executive Order 13985 on ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government'' and Executive Order 14091, ''Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.'' and in response to comments received during the Agency's Request for Information to receive input from the public on FEMA programs, regulations, and collections of information, FEMA is updating its IHP regulations. FEMA makes these changes to simplify the IHP, promote more equitable access to disaster assistance, and to reflect changes made to statutory authority. These changes will remove administrative burdens, improve overall timeliness, and utilize program and policy discretion to reduce barriers.

FEMA makes the following changes to increase equity and ease of entry to IHP:

1. Revise IHP eligibility determinations based on insurance proceeds to help with unmet needs;

[371] Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA).

[372] Sandy Recovery Improvement Act of 2013 (SRIA).

[373] Disaster Recovery Reform Act of 2018 (DRRA).

[374] The term ''recipients'' used throughout this document refers to individuals and households that apply for IHP assistance and receive assistance from FEMA.

[375] FEMA defines the term ''State'' to mean for the purposes of Subpart D of 44 CFR 206 and where consistent with the requirements of the Stafford Act, any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands or Indian tribal government as defined in the Stafford Act (42 U.S.C. 5122(6)).

[376] The term ''applicants'' used throughout this document refers to individuals and households that apply for IHP assistance.

2. Expand application of habitability ''safe, sanitary, and functioning'' for IHP to include pre-existing damage;

3. Amend CTHA process and timeline in which applicants provide permanent housing plan documents. Also, codify CTHA income threshold of 30 percent of applicant's post-disaster income towards their post-disaster housing costs;

4. Remove the requirement to apply for an SBA loan prior to receipt of certain types of ONA;

5. Establish Serious Needs Assistance ONA;

6. Establish Displacement Assistance ONA;

7. Simplify IA appeals process;

8. Amend IA registration to allow for the reopening of the registration period

9. Amend IA late registration to accept verbal explanations for applicant requests;

10. Expand Personal Property Assistance ONA eligibility for computing devices;

11. Expand Personal Property Assistance ONA eligibility for self-employed essential tools;

12. Expand Home Repair Assistance to include accessibility-related items for applicants who have a disability but had unmet pre-disaster accessibility needs;

13. Codify Home Repair Assistance to include accessibility-related items for survivors with disaster-related disabilities;

14. Codify Home Repair Assistance for professional assessments; and

15. Codify requirements waiver of certain IHP debt.

Additionally, to support eligible applicants' ability to respond to and recover from major disasters and emergencies, Congress passed PKEMRA, SRIA, and DRRA. This rule will incorporate certain changes identified in those acts into regulation including assistance for Security Deposits and Utilities (PKEMRA), Child Care Assistance (SRIA), Lease and Repair of Multifamily Rental Housing (SRIA), and Maximum Amount of Assistance (DRRA).

2. Affected Population

The IHP provides financial assistance and direct services to eligible individuals and households who have uninsured or underinsured necessary expenses and serious needs as a result of a Presidentially-declared disaster. From 2010 to 2019, the average number of IHP recipients was 340,654 per year.[377]

3. Baseline

Following OMB Circular A–4 guidance, FEMA assessed impacts of this rule against a no-action baseline and pre-guidance baseline. The no-action baseline is what the world will look like without this rule. Accordingly, measuring the rule against a no-action baseline shows the effects of the rule as compared to current FEMA practice (*i.e.,* compared to IA Guidance, which reflects FEMA's current practice). A pre-guidance baseline is what the world will look like without the enabling statute or guidance that FEMA issued to implement it. Accordingly, measuring the rule against a pre-guidance baseline shows the effects of the rule as compared to FEMA practice prior to enactment of the enabling statute or guidance (*i.e.,* as if FEMA had not already implemented the statutory or policy changes through the IAPPG).

FEMA conducted a 10-year retrospective analysis of available IA Program data from 2010–2019, the most recent representative disaster period with complete data at the time of this analysis, to estimate how the rule will impact major disaster declarations costs, benefits, and transfers over a 10-year period.[378] FEMA recognizes a future 10-year period could vary from the 2010–2019 period. However, this is the best estimate given the data available and the unpredictability of the number, size, and cost of future IA awards.

4. Transfer Payments

Transfer payments are monetary payments from one group to another that do not affect the total resources available to society. The assistance FEMA provides to recipients through IHP grants are considered transfer payments because these are monetary payments from FEMA and States to individuals and households for their purchase of goods and services. In this analysis, FEMA has analyzed the impact of this rule on these transfer payments.

No-Action Baseline

The rule under a no-action baseline will result in additional transfer payments due to the following changes for: Insurance Proceeds, Habitability, Removing SBA Requirement for ONA, Serious Needs Assistance, Displacement Assistance, Appeals Process, Reopening Registration Period, Personal Property Assistance (PPA) Computing Devices, PPA Self-Employed, and Home Repair for Accessibility-Related Items for Per-Disaster Unmet Needs. Other changes, such as providing reimbursement for a professional assessment for unclear damage and providing child care assistance, were changed by statute and have been already implemented by FEMA through IA Guidance. Because FEMA has already implemented these policies and codifies them without change, the codification of these policies will not impact transfer payments under the no-action baseline. Additionally, the late registration change of accepting verbal explanations for late registration requests is not expected to impact transfer payments.

Under a no-action baseline, the rule increases assistance provided from FEMA and States to individuals and households by an estimated $672 million per year. Specifically, FEMA's transfer payments increase by $512 million per year and State transfer payments, due to State ONA cost share, increases $160 million per year. The three largest changes (removing SBA requirement of ONA, Serious Needs Assistance, and Displacement Assistance) account for approximately 87 percent of the increase in transfer payments and detailed summaries of these impact are provided below measured against the no-action baseline.

FEMA's change removing the SBA loan application requirement prior to receipt of certain types of ONA accounts for more than 20 percent of the transfer payment increase, estimated at $155,551,150 (FEMA $116,663,362 + State $38,887,788) per year. Currently, applicants seeking certain types of IHP ONA must first apply and be denied for an SBA disaster loan. Through this process, applicants who qualify for an SBA loan are ineligible to receive certain types of ONA. Unlike ONA, which is a grant that does not need to be repaid, an SBA loan accrues interest and must be repaid. SBA-dependent ONA includes three types of assistance Personal Property assistance, Transportation assistance, and GFIP.[379] FEMA estimates that, from 2010–2019, approximately 45 percent of SBA-dependent ONA applicants received SBA-dependent ONA; these applicants either did not meet the income threshold to be referred to the SBA to apply for a loan or applied for a loan and were denied. This rule will remove the requirement that applicants apply for an SBA loan before becoming

[377] Data pulled from Enterprise Data Warehouse (EDW) was used to calculate the historical IHP average number of recipients for 2010–2019.

[378] FEMA considered 2010–2019 the most representative analysis period when selecting the data and time-period for estimating impacts of this rule into the future. At the time of this analysis, in early 2021, data from 2020 was available but not used for this analysis as Covid data posed more bias and uncertainty risks than value when estimating future impacts.

[379] See page 150, SBA-dependent ONA, of IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

eligible for ONA; however, applicants may still choose to apply for an SBA loan to assist with their recovery.

FEMA used ONA recipient data from EDW for 2010 through 2019 to establish a no-action baseline. From 2010 to 2019, an average of 174,693 recipients received ONA annually and the average award was $1,455. FEMA awarded $254,178,315 (= 174,693 × $1,455) of ONA on average annually. Accordingly, FEMA estimates that under a no-action baseline, 174,693 recipients will receive ONA annually and ONA assistance will total $254,178,315 per year. FEMA uses these amounts against which to measure the change to remove the SBA requirement for ONA.

FEMA used the three types of SBA-dependent ONA assistance (Personal Property assistance, Transportation assistance, and GFIP) historical ONA data to estimate the impact to households and individuals of the changes to eliminate the requirement to apply for an SBA loan prior to receipt of ONA. From 2010 to 2019, an average of 174,693 recipients received ONA annually. Based on FVL damages collected from ONA applicants 2010 through 2019, FEMA estimates the number applicants previously ineligible for ONA under Personal Property Assistance and Transportation Assistance with disaster damage was 574,899 referred applicants, or 57,490 applicants per year. These applicants previously would have either received an SBA loan or been eligible but chose not to receive a loan. FEMA estimates that, after removing the SBA application requirement, these 57,490 applicants currently ineligible for SBA-dependent ONA will receive the average ONA amount of $1,455 resulting in additional assistance of $83,647,950 (= 57,490 × $1,455) per year. The ONA average award amount of $1,455 was used for these applicants because Personal Property Assistance and Transportation Assistance are the most frequent types of SBA–ONA assistance and represents the average recipient award amount. Additionally, from 2010 through 2019 there were 422,958 referred ONA ineligible applicants, or 42,296 per year, with flood damage within a flood zone. Applicants located in Special Flood Hazard Areas, who receive disaster assistance after a flooding event, are required to buy and keep flood insurance on their property. As part of ONA, FEMA will provide GFIP for eligible applicants. FEMA estimates that, after removing the SBA application requirement, these 42,296 applicants currently ineligible for SBA-dependent ONA will receive the average GFIP amount of $1,700 resulting in additional assistance of $71,903,200 (42,296 × $1,700) per year in the future. The $1,700 specific GFIP average amount was used for these applicants because FEMA was able to identify those in a flood zone and GFIP would be in addition to any other SBA-dependent ONA amounts.

FEMA's primary impact estimate of this change is an additional $155,551,150 (= $83,647,950 + $71,903,200) in ONA awards annually. ONA is a cost-shared program between FEMA and the affected State, where the State typically covers 25 percent of ONA award and FEMA covers 75 percent. State's transfer payments for the additional ONA will be $38,887,788 per year (= $155,551,150 × 25 percent) and FEMA's transfer payments will be $116,663,362 per year (= $155,551,150 × 75 percent).

FEMA will establish Displacement Assistance under ONA that will provide assistance to eligible survivors whose homes are uninhabitable. FEMA expects Displacement Assistance will be a payment per recipient to cover 14 nights of lodging in most cases. Displacement Assistance will become a preceding step before requesting initial Rental Assistance and those receiving Displacement Assistance will be ineligible for LER Assistance.

Currently there are two primary types of assistance for displaced survivors: LER Assistance and initial Rental Assistance. FEMA used LER and initial Rental Assistance data from EDW for 2010 through 2019 to estimate the baseline for this change. FEMA estimates a no-action baseline of 142,273 recipients who receive LER or Rental Assistance (= 2,367 LER recipients + 139,906 Initial Rental Assistance recipients) and approved assistance in the amount of $315,987,647 (= $3,017,925 + $312,969,722) per year. Displacement Assistance will be a new type of assistance established through this rule; recipients will be ineligible for LER assistance.

To estimate the impact that establishing Displacement Assistance will have on transfer payments, FEMA used the State standard U.S. General Services Administration (GSA) lodging rates in conjunction with initial Rental Assistance data. Initial Rental Assistance data from 2010–2019 provided the recipient count for each State. FEMA assumes that individuals who received Initial Rental Assistance will meet the criteria to receive newly established Displacement Assistance. Additionally, FEMA used IHP data 2010–2019 to estimate that an average of 67,075 individuals per year were displaced due to housing damage but were unwilling to relocate. These individuals unwilling to relocate were ineligible for Rental Assistance but will be eligible for Displacement Assistance. Because the amount in Displacement Assistance will vary by State according to GSA lodging rates, FEMA needed recipient counts by State in order to estimate the amount in Displacement Assistance that FEMA might provide. FEMA multiplied the number of recipients per State by the GSA lodging rate for each State to calculate a per State total. Next, FEMA summed the State totals to create a national total. Finally, FEMA divided the national total by the total number of Initial Rental Assistance recipients to estimate an average per recipient Displacement Assistance amount of $1,369 (= $283,356,989 average annual amount ÷ 206,981 (139,906 Rental + 67,075 unwilling to relocate) average number of Initial Rental Assistance recipients and those unwilling to relocate). FEMA used the estimated the average Displacement Assistance amount per recipient of $1,369 multiplied by the average number of recipients for LER and initial Rental Assistance 209,348 (= 2,367 + 206,981) per year to estimate the average annual amount of Displacement Assistance at $286,597,412 (= $1,369 × 209,348). FEMA anticipates LER for displaced applicants with disaster-damage to their home will fall to near zero based on the sequence of assistance delivery for Displacement Assistance (*i.e.,* it could be paid out quicker), and those receiving Displacement Assistance will be ineligible for LER. FEMA's primary estimate assumes the assistance FEMA currently provides through LER to be zero in the future and initial Rental Assistance will decline by 20 percent from the current 10-year average totaling $250,375,778 ($312,969,722 × (1–20 percent)) per year. Accordingly, FEMA estimates the change will cause assistance for Displacement Assistance, LER, and initial Rental Assistance to increase to $536,973,190 (= $286,597,412 Displacement + $0 LER + $250,375,778 Rental) per year.

The estimated annual transfer payments from FEMA and States to recipients (individuals/households) for the new Displacement Assistance ONA increases assistance by $220,985,543 (= $536,973,190–$315,987,647 baseline) per year. ONA is a cost-shared program between FEMA and the affected State, where the State typically covers 25 percent of ONA award and FEMA covers 75 percent. States' transfer payments for Displacement Assistance ONA will be $55,246,386 (=

$220,985,543 × 25 percent) per year and FEMA's transfer payments will be $165,739,157 (= $220,985,543 × 75 percent) per year.

FEMA is also creating Serious Needs Assistance to provide assistance in an amount established by FEMA to eligible survivors to address immediate needs related to sheltering, evacuation, or other emergency disaster expenses. Serious Needs Assistance will be more widely available to survivors than CNA as Serious Needs Assistance will not require an additional State request and FEMA approval, unlike CNA. Serious Needs Assistance will take the place of CNA. FEMA used CNA data from EDW for 2015 through 2019 to estimate the baseline and impact for this change due to more frequent CNA usage during this period. Prior to 2015, CNA was rarely used with most years having zero CNA recipients.[380] An average of 185,937 recipients received CNA per year at an average amount of $528. FEMA estimates a no-action baseline of 185,937 recipients who receive CNA and assistance provided of $98,174,736 (= 185,937 × $528) per year.

FEMA used IHP applicant data from EDW for 2015 through 2019 to estimate the impact that replacing CNA with the new, broader, Serious Needs Assistance will have on transfer payments. FEMA's change to Serious Needs Assistance will standardize eligibility within the declaration area based on the applicant's location being out of the pre-disaster home or that they report they have other emergency disaster expenses.[381] FEMA applied this new Serious Needs Assistance eligibility to all IHP applicant data from 2015 through 2019 (regardless if CNA was activated by the State or not) to identify applicants that will receive Serious Needs Assistance under the new policy. FEMA estimates 410,807 applicants per year will meet eligibility and receive Serious Needs Assistance. FEMA believes $750 is the most appropriate amount to cover immediate post-disaster serious needs based on prior experience with CNA. Accordingly, FEMA estimates Serious Needs Assistance will be $308,105,250 (= 410,807 × $750) per year.

FEMA estimates that the new Serious Needs Assistance ONA increases annual transfer payments from FEMA and States to recipients (individuals/households) by $209,930,514, for a total of $308,105,250 in Serious Needs Assistance per year (from a baseline of $98,174,736 in CNA per year). ONA is cost-shared between FEMA and the affected State. The State typically covers 25 percent of the ONA award and FEMA covers 75 percent. The States' portion of the additional assistance provided under Serious Needs Assistance ONA will be $52,482,628 (= $209,930,514 × 25 percent) per year and FEMA's portion will be $157,447,886 (= $209,930,514 × 75 percent) per year.

FEMA will expand Personal Property Assistance so that a household may receive financial assistance for a disaster-damaged computing device, regardless of its intended use. While FEMA had previously provided assistance for damaged computers, it was limited to those computers that were required for educational purposes or as a condition of employment. FEMA recognizes that technology continues to have an increasing role in how households communicate, manage finances, and facilitate many other necessary aspects of daily living. FEMA used 2010–2019 Personal Property ONA data to estimate the impact of the changes. FEMA estimated the number of additional recipients based on the average number of recipients with Personal Property awards 2010–2019 and the assistance estimated award amount for a computing device of $900. To estimate the number of additional recipients, FEMA used the average annual number of Personal Property Assistance recipients of 53,131 because recipients of Personal Property Assistance sustained damage to personal property and FEMA assumed all such recipients will be eligible for assistance to replace one computer. FEMA estimates that the annual impact of the change will be an additional $47,817,900 (= 53,131 × $900) in assistance. ONA is a cost-shared program between FEMA and the affected State, where the State typically covers 25 percent of ONA award and FEMA covers 75 percent. States' portion of the new Personal Property Assistance ONA will be $11,954,475 (= $47,817,900 × 25 percent) and FEMA's portion will be $35,863,425 (= $47,817,900 × 75 percent).

In Table 8 below, FEMA presents the total change in transfer payments from the rule as measured against a no-action baseline (*i.e.,* the effects of the rule as compared to current FEMA practice). FEMA estimates that this rule, as measured against a no-action baseline, will result in an additional $6.72 billion in transfer payments from FEMA and States to individuals and households over 10-years. The total 10-year discounted transfer payments will be $5.73 billion at a 3 percent discount rate and $4.72 billion at a 7 percent discount rate; this is $672 million annualized at a 3 percent and 7 percent discount rate (Table 8).

[380] Limited CNA usage prior to 2015 may have been due to the requirements for requesting and justifying CNA and a lack of State familiarization with this assistance.

[381] Currently CNA must be requested with a justification from the State for each disaster. FEMA has also often waived certain eligibility criteria or only approved assistance in certain counties, parishes, or municipalities.

Table 8— Estimated Transfers, Future 10 Year Period, No-Action Baseline (2020$)

Year	FEMA Transfer Payments to Recipients	State Transfer Payments to Recipients	Total Transfer Payments	Annual Transfer Payments Discounted at 3%	Annual Transfer Payments Discounted at 7%
1	$512,116,462	$159,882,122	$671,998,584	$652,425,810	$628,036,060
2	$512,116,462	$159,882,122	$671,998,584	$633,423,116	$586,949,589
3	$512,116,462	$159,882,122	$671,998,584	$614,973,899	$548,551,017
4	$512,116,462	$159,882,122	$671,998,584	$597,062,038	$512,664,502
5	$512,116,462	$159,882,122	$671,998,584	$579,671,882	$479,125,703
6	$512,116,462	$159,882,122	$671,998,584	$562,788,235	$447,781,031
7	$512,116,462	$159,882,122	$671,998,584	$546,396,344	$418,486,945
8	$512,116,462	$159,882,122	$671,998,584	$530,481,888	$391,109,294
9	$512,116,462	$159,882,122	$671,998,584	$515,030,959	$365,522,705
10	$512,116,462	$159,882,122	$671,998,584	$500,030,057	$341,610,004
Total	$5,121,164,620	$1,598,821,220	$6,719,985,840	$5,732,284,228	$4,719,836,850
Annualized				$671,998,584	$671,998,584

Pre-Guidance Baseline

The rule under a pre-guidance baseline will result in additional transfer payments due to the following changes (mirroring the no-action baseline changes) that FEMA makes through this rule: Insurance Proceeds, Habitability, Removing SBA Requirement for ONA, Serious Needs Assistance, Displacement Assistance, Appeals Process, Reopening Registration Period, Personal Property Assistance (PPA) Computing Devices, PPA Self-Employed, and Home Repair for Accessibility-Relates Items for Per-Disaster Unmet Needs. FEMA also codifies a number of changes that FEMA has previously implemented through guidance. FEMA has measured the impact of these changes on transfer payments against the pre-guidance baseline. These are for changes to: CHTA, Professional Assessment for Unclear Damage, Debt Waiver, MLR, Assistance for Child Care, Assistance for Security Deposit Payments, Assistance for Utility Payments, Temporary Housing (TH) Maximum Cap Removal, and HA and ONA Maximum Cap Separation.

In Table 9 below, FEMA presents the total change in transfer payments from the rule as measured against a pre-guidance baseline (*i.e.,* the effects of the rule as compared to FEMA practice prior to implementing statutory changes). Under a pre-guidance baseline, the changes that FEMA has already implemented and codifies the new changes FEMA implements through this rule increases assistance provided from FEMA and States to individuals and households estimated at $711 million per year over the next 10 years. Specifically, FEMA's transfer payments will be $551 million per year and State transfer payments due to the State ONA cost share will be $160 million per year.

Under a pre-guidance baseline, FEMA's three largest changes (removing SBA requirement of ONA, Serious Needs Assistance, and Displacement Assistance) account for approximately more than 80 percent of the increase in transfer payments estimated at $587 million (FEMA transfer payments $440 million + State transfer payments $147 million) per year.

FEMA estimates the 10-year undiscounted transfer payments of the rule measured against a pre-guidance baseline will be $7.11 billion. The total 10-year discounted transfer payments will be $6.06 billion at a 3 percent discount rate and $4.99 billion at a 7 percent discount rate, with annualized transfers of $711 million at a 3 percent and 7 percent discount rate (Table 9).

Table 9— Estimated Transfers, Future 10 Year Period, Pre-Guidance Baseline (2020$)

Year	FEMA Transfer Payments to Recipients	State Transfer Payments to Recipients	Total Transfer Payments	Annual Transfer Payments Discounted at 3%	Annual Transfer Payments Discounted at 7%
1	$551,054,616	$159,887,957	$710,942,573	$690,235,508	$664,432,311
2	$551,054,616	$159,887,957	$710,942,573	$670,131,561	$620,964,777
3	$551,054,616	$159,887,957	$710,942,573	$650,613,166	$580,340,913
4	$551,054,616	$159,887,957	$710,942,573	$631,663,268	$542,374,685
5	$551,054,616	$159,887,957	$710,942,573	$613,265,309	$506,892,229
6	$551,054,616	$159,887,957	$710,942,573	$595,403,212	$473,731,055
7	$551,054,616	$159,887,957	$710,942,573	$578,061,371	$442,739,304
8	$551,054,616	$159,887,957	$710,942,573	$561,224,632	$413,775,050
9	$551,054,616	$159,887,957	$710,942,573	$544,878,284	$386,705,654
10	$551,054,616	$159,887,957	$710,942,573	$529,008,042	$361,407,154
Total	$5,510,546,160	$1,598,879,570	$7,109,425,730	$6,064,484,353	$4,993,363,132
Annualized				$710,942,573	$710,942,573

5. Costs

No-Action Baseline

In Table 10 below, FEMA presents the total costs of the rule as measured against a no-action baseline (*i.e.,* the effects of the rule as compared to current FEMA practice) over the next 10 years. The rule, under a no-action baseline, will result in additional costs to States, FEMA, and applicants. States will have additional costs due to familiarization with the rule in the first year only estimated at $41,816. FEMA expects to incur costs for implementing system updates related to the changes in this rule in the first two years estimated to be $4.3 million per year. Additionally, FEMA expects to incur costs for reviewing additional documentation submitted by applicants. FEMA anticipates that applicants will submit additional documents to FEMA as a result of the following changes in this rule: (1) removing the requirement to first apply for a Small Business Administration (SBA) loan before receipt of certain types of ONA ($578,934), (2) FEMA exercising its option to reopen a registration period ($991), and (3) expanded assistance for accessibility-related items ($13,122). FEMA estimates a total of $593,047 per year in additional documentation review costs to FEMA.

Applicants will have additional costs due to increased burden hours for submitting documentation to FEMA related to these same changes: removal of the SBA application requirement ($334,300), registration period reopening ($830), and application for accessibility-related items ($10,982). FEMA estimates applicants burden hour costs increases by a total of $346,112 per year.

FEMA estimates total costs, to FEMA, States, and applicants, at $5,280,975 (= $41,816 + $4,300,000 + $593,047 + $346,112) in the first year, $5,239,159 (= $4,300,000 + $593,047 + $346,112) in the second year, and $939,159 (= $593,047 + $346,112) in subsequent years.

FEMA estimates the 10-year undiscounted costs of the rule will be $18.0 million over the next 10 years as measured against a no-action baseline. The total 10-year discounted costs will be $16.3 million at a 3 percent discount rate and $14.4 million at a 7 percent discount rate, with annualized costs of $1.9 million at a 3 percent and $2.1 million at a 7 percent discount rate (Table 10).

Table 10—Estimated Costs, Future 10 Year Period, No-Action Baseline (2020$)

Year	FEMA Costs	State Costs	Applicant Costs	Total Costs	Annual Costs Discounted at 3%	Annual Costs Discounted at 7%
1	$4,893,047	$41,816	$346,112	$5,280,975	$5,127,160	$4,935,491
2	$4,893,047	$0	$346,112	$5,239,159	$4,938,410	$4,576,084
3	$593,047	$0	$346,112	$939,159	$859,464	$766,633
4	$593,047	$0	$346,112	$939,159	$834,431	$716,480
5	$593,047	$0	$346,112	$939,159	$810,127	$669,607
6	$593,047	$0	$346,112	$939,159	$786,531	$625,801
7	$593,047	$0	$346,112	$939,159	$763,622	$584,861
8	$593,047	$0	$346,112	$939,159	$741,381	$546,599
9	$593,047	$0	$346,112	$939,159	$719,787	$510,840
10	$593,047	$0	$346,112	$939,159	$698,822	$477,421
Total	$14,530,470	$41,816	$3,461,120	$18,033,406	$16,279,735	$14,409,817
Annualized					$1,908,482	$2,051,634

Pre-Guidance Baseline

In Table 11 below, FEMA presents the total costs of the rule over the future 10-year period as measured against a pre-guidance baseline (*i.e.,* the effects of the rule as compared to FEMA practice prior to implementing the statutory changes). The rule, under a pre-guidance baseline, will result in additional costs to States, FEMA, and applicants. States will have additional costs due to familiarization with the rule in the first year only estimated at $41,816. FEMA expects to incur costs for implementing system updates related to the changes in this rule in the first two years estimated to be $4.3 million per year. The rule also increases costs for FEMA due to (1) reviewing additional applicant submitted documentation for the SBA requirement removal ($578,934), (2) debt waiver ($460), (3) child care ($708), (4) registration period reopening ($991), and (5) accessibility-related items ($13,122), which total an estimated $594,215 per year measured against a pre-guidance baseline.

Applicants will have additional costs due to increased burden hours for submitting documentation related to the same changes: (1) SBA requirement removal ($334,300), (2) debt waiver ($385), (3) child care assistance ($593), (4) registration period reopening ($830), and (5) applicants with a disability applying for accessibility-related items ($10,982). FEMA estimates the total cost to applicants for the new changes in this rule and the changes FEMA has already implemented and codifies is $347,090 per year measured against a pre-guidance baseline. FEMA estimates costs, before cost saving, at $5,283,121 (= $41,816 + $4,300,000 + $594,215 + $347,090) in the first year, $5,241,305 (= $4,300,000 + $594,215 + $347,090) in the second year, and $572,190 (= $594,215 + $347,090) in subsequent years.

FEMA estimates the 10-year undiscounted costs of the rule will be $18.1 million measured against a pre-guidance baseline. The total 10-year discounted costs will be $16.3 million at a 3 percent discount rate and $14.4 million at a 7 percent discount rate, with annualized costs of $1.9 million at a 3 percent and $2.1 million at a 7 percent discount rate (Table 11).

Table 11—Estimated Costs, Future 10 Year Period, Pre-Guidance Baseline (2020$)

Year	FEMA Costs	State Costs	Applicant Costs	Total Costs	Annual Costs Discounted at 3%	Annual Costs Discounted at 7%
1	$4,894,215	$41,816	$347,090	$5,283,121	$5,129,244	$4,937,496
2	$4,894,215	$0	$347,090	$5,241,305	$4,940,433	$4,577,959
3	$594,215	$0	$347,090	$941,305	$861,427	$768,385
4	$594,215	$0	$347,090	$941,305	$836,337	$718,117
5	$594,215	$0	$347,090	$941,305	$811,978	$671,137
6	$594,215	$0	$347,090	$941,305	$788,328	$627,231
7	$594,215	$0	$347,090	$941,305	$765,367	$586,197
8	$594,215	$0	$347,090	$941,305	$743,075	$547,848
9	$594,215	$0	$347,090	$941,305	$721,432	$512,008
10	$594,215	$0	$347,090	$941,305	$700,419	$478,512
Total	$14,542,150	$41,816	$3,470,900	$18,054,866	$16,298,040	$14,424,890
Annualized					$1,910,627	$2,053,780

6. Cost Savings

The rule, under a no-action and pre-guidance baseline, will also reduce burden costs for applicants by removing the SBA loan application requirement prior to certain FEMA assistance and lowering the expected number of applicants spending time completing loan applications ($2,029,273), submitting CTHA streamlined incremental documentation ($870,862), the more flexible appeals process documentation ($861,338), and the simplified option for verbal explanations of late registration requests ($207,727) resulting in cost savings estimated at $1,939,927 per year. FEMA will also have cost savings related to CTHA documentation review ($7,220) and late registration review ($173,928) estimated at $181,148 per year. Additionally, SBA will have cost savings because fewer loan applications will be submitted and reviewed by SBA staff resulting in savings estimated at $3,877,763 per year. The combined Federal Government cost savings are estimated at $4,058,911 (FEMA $181,148 + SBA $3,877,763).

FEMA estimates the 10-year undiscounted cost savings of the will be $80.3 million. The total 10-year discounted cost savings will be $68.5 million at a 3 percent discount rate and $56.4 million at a 7 percent discount rate, with annualized cost savings of $8.0 million at a 3 percent and 7 percent discount rate (Table 12).

Table 12— Estimated Cost Savings, Future 10 Year Period, No-Action and Pre-Guidance (2020$)

Year	FEMA Cost Savings	Applicant Cost Savings	Total Cost Savings	Annual Cost Savings Discounted at 3%	Annual Cost Savings Discounted at 7%
1	$4,058,911	$3,969,200	$8,028,111	$7,794,283	$7,502,907
2	$4,058,911	$3,969,200	$8,028,111	$7,567,265	$7,012,063
3	$4,058,911	$3,969,200	$8,028,111	$7,346,859	$6,553,330
4	$4,058,911	$3,969,200	$8,028,111	$7,132,873	$6,124,607
5	$4,058,911	$3,969,200	$8,028,111	$6,925,119	$5,723,932
6	$4,058,911	$3,969,200	$8,028,111	$6,723,417	$5,349,469
7	$4,058,911	$3,969,200	$8,028,111	$6,527,589	$4,999,504
8	$4,058,911	$3,969,200	$8,028,111	$6,337,465	$4,672,434
9	$4,058,911	$3,969,200	$8,028,111	$6,152,879	$4,366,760
10	$4,058,911	$3,969,200	$8,028,111	$5,973,669	$4,081,085
Total	$40,589,110	$39,692,000	$80,281,110	$68,481,418	$56,386,091
Annualized				$8,028,111	$8,028,111

7. Total Net Costs

FEMA estimates net cost savings under a no-action baseline at $2.7 million (= $5,280,975 costs − $8,028,111 cost savings) in the first year, $2.8 million (= $5,239,159 costs − $8,028,111 cost savings) in the second year, and $7.1 million (= $980,975 costs − $8,028,111 cost savings) in subsequent years for this rule.

FEMA estimates net cost savings under a pre-guidance baseline at $2.7 million (= $5,283,121 costs − $8,028,111 cost savings) in the first year, $2.8 million (= $5,241,305 costs − $8,028,111 cost savings) in the second year, and $7.1 million (= $941,305 costs − $8,028,111 cost savings) in subsequent years for this rule.

8. Benefits

FEMA was unable to quantify benefits of this rule because data does not explicitly exist for the types of benefits incurred. All benefits associated with the rule will be qualitative. FEMA anticipates this rule will promote more equitable access to disaster assistance by reducing applicant barriers, improving overall timeliness, and removing administrative burdens for disaster survivors. These benefits are expected to be broad based impacting disaster survivors applying for IHP assistance types covered in this rule. Ultimately, the rule will lead to a larger pool of eligible disaster survivors receiving disaster assistance funds than had in the past. The rule will also improve clarity and align FEMA regulations with statutory changes improving the efficiency and consistency of IHP assistance. The intent is that these changes will lead to improved recovery outcomes for applicant survivors with an emphasis on vulnerable populations.

No-Action Baseline

The following is an overview of equity (consistent, systematic fair, just, and impartial treatment of all) benefits under a no-action baseline for changes of this rule.

FEMA's change removing the requirement for applicants to apply for SBA loans prior to receipt of ONA will alleviate survivor administrative burden and help streamline recovery. FEMA used EDW applicant data for the FEMA to SBA referral date and SBA to FEMA return date from 2010 through 2019 to estimate the potential change in speed of assistance of this change. FEMA analyzed applicants that FEMA referred to SBA because their income met the referral threshold but who were denied an SBA loan and returned to FEMA for ONA. FEMA estimates that 364,334 (36,433 per year) such applications were referred to SBA and returned to FEMA for ONA. On average, 33.6 days (12,244,620 days ÷ 364,334 applicants) were required for those referred to SBA for loan repayment eligible consideration, determined ineligible for SBA loans, and returned to FEMA for ONA. Two potential reasons for this time delay estimate could be high volume of SBA referred applicants during the initial days following the disaster and non-responsiveness of applicants. FEMA anticipates that eliminating the need to apply to SBA for a loan before receiving ONA will reduce the time it takes for these 36,433 applicants to receive assistance from FEMA by 33.6 days, thereby streamlining the disaster assistance process for many individuals. Non-repayable assistance grants to survivors also provides greater financial assistance, than repayable SBA loans, allowing disaster survivors and communities to recover more quickly. Additionally, lower income survivors are less likely to apply for an SBA loan, due to uncertain financial and employment conditions following a disaster. Benefits of this change will remove administrative burdens to increase applicant access to assistance.

Benefits from streamlining the appeals process by removing the signed letter requirement are that the appeal requirements will be more equitable and flexible. Applicants could still submit a signed letter explaining the reason(s) for an appeal or applicants could instead choose to provide verifiable documentation of their appeal. To further assist applicants with navigating

the appeals process, FEMA is creating an optional appeal request form for an applicant to use when submitting an appeal. FEMA expects that this optional appeal request form increases the approval rate for disaster survivors seeking assistance.

FEMA's change for CTHA incremental documentation requirements for PHPs will lessen applicant burden and help FEMA provide appropriate resources and assistance to applicants throughout their housing recovery process. FEMA recognizes that post-disaster recovery can be a challenge for all applicants, FEMA will engage more closely to assist applicants in achieving a recovery outcome by the end of the period of assistance. Depending on the disaster, applicants may not be able to satisfy requirements of a PHP during the initial application. To expedite the recovery process, FEMA will remove the requirement for applicants to select a permanent housing plan during the initial application. FEMA will work with applicants through all recertification intervals to review their progress toward their PHP and identify specific resources to assist the applicant in achieving their recovery goals.

Benefits from the establishment of Displacement Assistance will address the need many disaster survivors have for short-term transitional assistance. Displacement Assistance will also be a more equitable and efficient way to provide short-term lodging rather than LER, as it is proactive assistance increasing the benefit for applicants that do not have the means to pay for lodging costs up front. It will also improve assistance equity as displaced disaster survivors within an area receive a consist amount of assistance to address their short-term lodging needs ensuring displaced survivors receive assistance covering common needs and allows for recipients to receive assistance quickly. Displacement Assistance also improves assistance flexibility and may avoid unintended use of funds, reducing the risk of applicants unable to qualify for Rental Assistance because they spent Rental Assistance funds on immediate needs or ineligible temporary housing solutions like staying with friends and family.

FEMA's change establishing Serious Needs Assistance will broaden eligible expense categories compared with CNA, thereby improving assistance flexibility. This change may avoid unintended use of funds reducing the risk of applicants unable to qualify for other FEMA assistance because they spent the prior more narrowly defined CNA on other needs. It will also provide all impacted disaster survivors a consistent amount of assistance ensuring all displaced survivors receive assistance covering common needs and allows for recipients to receive assistance more quickly. The benefits of establishing Serious Needs Assistance improves assistance flexibility to better help disaster survivors.

Benefits from expanding Home Repair and Home Replacement Assistance eligibility for accessibility-related items when these items were not present prior to the disaster and are necessary to make the damaged home safe and functional for someone who has a pre-existing disability increases assistance equity for those disaster survivors with a disability. This change will also address unmet needs and more effectively assist applicants achieve permanent housing solutions. FEMA continually faces challenges finding available accessible housing post-disaster, as there is a limited amount of accessible housing stock.

FEMA's change of broadening the ''uninhabitable'' definition to encompass disaster damage to the applicant's primary residence that causes the home to be unsuitable for occupancy better supports disaster survivors whose residences incurred disaster damage. According to the Federal Reserve, 32 percent of Americans could not cover an emergency expense of $400 with cash or its equivalent, with 11 percent saying they would be unable to pay the expense by any means.[382] This change will better support low income and other vulnerable disaster survivors who may not have the means to immediately address disaster damage. Additionally, FEMA is removing the requirement for disaster-damaged real property components to be functional immediately before the disaster for pre-existing damages exacerbated by the disaster. The benefit of expanding assistance increases types of eligible repairs and speed the repair of disaster-damaged dwellings for disaster survivors.

Benefits from expanding Personal Property Assistance so that a household may receive financial assistance for a disaster-damaged computing device, regardless of its intended use will provide additional assistance to help survivors replace disaster-damaged computing devices. This change reflects FEMA recognizing technology continues to have an increasing role in how households communicate, manage finances, and facilitate many other necessary aspects of daily living. This change aligns with the purpose of IHP is to determine what meets the basic needs of disaster survivors. In the current landscape, most households have a computing device;[383] therefore, it may be an essential need. Additionally, many states have requested that FEMA provide assistance for these types of items on their annual submission of their ONA Administrative Option Selection Form reflecting the importance of computing devices for disaster survivors.

FEMA's change for insurance proceeds, no longer comparing net insurance settlement amounts to the applicable maximum IHP Assistance amount when determining eligibility will more equitably address the unmet needs of underinsured applicants. FEMA's current use of the applicable maximum IHP Assistance amount as a threshold for determining eligibility creates an inequity between similarly impacted applicants. A one-dollar difference in net insurance settlement at the applicable maximum IHP Assistance amount determines an applicant's ineligibility for potentially thousands of dollars in IHP Assistance verses an applicant with one dollar less in net settlement who will be eligible. Excluding those insured applicants with a net insurance settlement amount that

[382] Federal Reserve Board, Report on the Economic Well-Being of U.S. Households 2021, Figures 19 and 20, *https://www.federalreserve.gov/publications/2022-economic-well-being-of-us-households-in-2021-dealing-with-unexpected-expenses.htm https://www.federalreserve.gov/publications/2022-economic-well-being-of-us-households-in-2021-dealing-with-unexpected-expenses.htm https://www.federalreserve.gov/publications/2022-economic-well-being-of-us-households-in-2021-dealing-with-unexpected-expenses.htm https://www.federalreserve.gov/publications/2022-economic-well-being-of-us-households-in-2021-dealing-with-unexpected-expenses.htm https://www.federalreserve.gov/publications/2022-economic-well-being-of-us-households-in-2021-dealing-with-unexpected-expenses.htm https://www.federalreserve.gov/publications/2022-economic-well-being-of-us-households-in-2021-dealing-with-unexpected-expenses.htm.*

[383] In April 2021, the U.S. Census Bureau released a report that examined trends in computer and internet use in 2018. Per the report, among all households in 2018, 92 percent had at least one type of computer. Please see *https://www.census.gov/content/dam/Census/library/publications/2021/acs/acs-49.pdf* for further information. This shows an increase in computer prevalence as compared to a 2016 study conducted by the Pew Research Center, which noted that 80 percent of American households had at least one desktop or laptop computer in their home. Additional data from the 2016 study conducted by the Pew Research Center study showed that a third of U.S. households had access to three or more smartphones. Please see *https://www.pewresearch.org/fact-tank/2017/05/25/a-third-of-americans-live-in-a-household-with-three-or-more-smartphones/.*

is equal to or exceeds the applicable maximum IHP Assistance amount can pose an obstacle to them achieving a permanent housing solution, especially for lower income homeowners, as lower income ineligible underinsured homeowners may be unable to afford the unmet need to repair their home.

Pre-Guidance Baseline

Under a pre-guidance baseline, the benefits above will apply as well as the benefits of the changes FEMA has already implemented and is codifying. The following provides an overview of additional equity (consistent, systematic fair, just, and impartial treatment of all) benefits under a pre-guidance baseline.

Amending the definition of ''financial ability'' to pay by removing the comparison between pre-disaster and post-disaster income and awarding CTHA recipients 30 percent of their post-disaster housing income streamlines applicant documentation and more accurately measures applicants' post-disaster financial situation. This change also reduced documentation of the pre-disaster income to lessen applicant burdens.

FEMA's change for MLR to lease, repair, and improve existing, vacant multifamily units as a type of temporary housing for applicants is cost-effective and more survivor-centric alternative to other temporary housing options. In addition to cost-effectiveness and improvements to properties that benefit affected communities, multifamily lease and repair assistance will provide more capacity for temporary housing. If available properties in the designated area are exhausted, applicants or FEMA will have more flexibility by incorporating this option in the portfolio of housing solutions.

In 2014, FEMA expanded assistance to recognize child care as a disaster-caused financial burden because the applicant's gross household income has decreased as a direct result of the disaster or because child care expenses have increased as a result of the disaster. By increasing assistance eligibility and reducing disruptions to affordable, local child care services, FEMA enables applicants to financially recuperate sooner and reduces disruptions to families.

FEMA's change allowing applicants to use security deposit payments for another property when an applicant is unable to return to their disaster-damaged home better assists applicants by allowing the recipient to make timely progress toward finding a long-term housing solution. This change increases assistance flexibility to better help the survivor recover.

FEMA revisions to align with section 698d of the PKEMRA to allow for payments of utilities, excluding telephone service. Providing additional assistance for utility payments increases CTHA flexibility to better help displaced survivors recover by reducing temporary housing burden costs for those with financial needs.

Benefits from removal of Temporary Housing Assistance applied to the Financial Housing Assistance maximum ensures those applicants with the most severe disaster damage may still have funds available to them for temporary housing solutions.

FEMA's change to have separate and individual maximum caps for HA and ONA ensures those applicants with the most severe disaster damage receive eligible assistance at least equivalent to similarly impacted disaster survivors for HA and ONA. This policy change removes limiting HA like Home Repair Assistance due to assistance already ready received for ONA.

FEMA change to waive debt for individuals and households who received assistance through the IHP that was distributed in error by FEMA benefitted disaster survivors who accrued this debt through no fault of their own. This change reduced repayment burden for these applicants which could place additional financial hardship on disaster survivors. FEMA made this policy change to align with DRRA.

9. Baseline Time Period

As discussed above, to provide a full understanding of the impacts of the policy changes discussed in this rule, DHS measured their impacts relative to two baselines. The no action baseline represents a state o the world under current FEMA policies; that is, impacts of the rule as compared to IA Guidance. The second baseline considered in the analysis is the pre-guidance baseline, which represents a state of the world before statutory changes and/or FEMA's implementing guidance. Table 13 provides a summary of the impacts of the rule over a 10-year future period of analysis as measured against a no-action baseline. Table 14 provides a summary of the impacts measured against the pre-guidance baseline for a 21-period of analysis that includes the actual impacts from the changes that FEMA has already implemented and will codify (2010–2019) combined with the future impacts of these changes and the new changes FEMA implements through this rule (2020–2030).

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Table 13—Circular A-4 Accounting Statement, No-Action Baseline (2020$), 2021-2030

Category	3 Percent Discount Rate	7 Percent Discount Rate	Source Citation
BENEFITS			
Annualized Monetized	N/A	N/A	RIA 9
Annualized quantified, but unmonetized benefits	N/A	N/A	
Qualitative (unquantified) benefits	• Promote more equitable access to disaster assistance and improve recovery outcomes by reducing applicant barriers, improving overall timeliness, and removing administrative burdens		
COSTS			
Annualized Monetized	$1.9 million	$2.1 million	RIA 8
From/To	Increase in costs for States, FEMA, and applicants		
Annualized quantified, but unmonetized, costs	N/A	N/A	
Qualitative (unquantified) costs	N/A		
COST SAVINGS			
Annualized Monetized	$8.0 million	$8.0 million	RIA 8
From/To	Cost savings for applicants and FEMA		
Annualized quantified, but unmonetized, costs	N/A	N/A	
Qualitative (unquantified) costs	N/A		
TRANSFERS			
Annualized Monetized	$672 million	$672 million	RIA 7
From/To	Transfer payments from FEMA and States to recipients		
Category	**Effects**		**Source Citation**
Effects on State, local, and/or Tribal Governments	Expanding IHP assistance to individuals and households will add familiarization costs for States.		RIA
Effects on small businesses	Expanding Federal assistance for self-employed applicants for replacement of disaster-damaged essential tools.		RIA 6.12
Effects on wages	None		N/A
Effects on growth	None		N/A

Table 14—Circular A-4 Accounting Statement, Pre-Guidance Baseline (2020$), 2010-2030

Category	3 Percent Discount Rate	7 Percent Discount Rate	Source Citation
BENEFITS			
Annualized Monetized	N/A	N/A	RIA 9
Annualized quantified, but unmonetized benefits	N/A	N/A	
Qualitative (unquantified) benefits	• Promote more equitable access to disaster assistance and improve recovery outcomes by reducing applicant barriers, improving overall timeliness, and removing administrative burdens • Improve clarity and align FEMA regulations with statutory changes improving the efficiency and consistency of IHP assistance		
COSTS			
Annualized Monetized	$0.8 million	$0.7 million	RIA 8
From/To	Increase in costs for States, FEMA, and applicants		
Annualized quantified, but unmonetized, costs	N/A	N/A	
Qualitative (unquantified) costs	N/A		
COST SAVINGS			
Annualized Monetized	$3.6 million	$2.8 million	RIA 8
From/To	Cost savings for applicants and FEMA		
Annualized quantified, but unmonetized, costs	N/A	N/A	
Qualitative (unquantified) costs	N/A		
TRANSFERS			
Annualized Monetized	$336 million	$336 million	RIA 7
From/To	Transfer payments from FEMA and States to recipients		
Category	**Effects**		**Source Citation**
Effects on State, local, and/or Tribal Governments	Expanding IHP assistance to individuals and households will add familiarization costs for States.		RIA
Effects on small businesses	Expanding Federal assistance for self-employed applicants for replacement of disaster-damaged essential tools.		RIA 6.12
Effects on wages	None		N/A
Effects on growth	None		N/A

Table 15—Marginal Analysis

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
Technical Changes						
§ 206.101 Temporary Housing Assistance for Emergencies and Major Disasters Declared on or before October 14, 2002	Removes and reserves § 206.101 because it is outdated and no longer necessary; will extend reservations to §§ 206.101-109	No	D	None.	None.	None.
§ 206.131 Individual and Family Grant Program for major disasters declared on or before October 14, 2002	Removes and reserves § 206.131 outdated and no longer necessary, will extend reservations to §§ 206.131-140 and revises the heading of Subpart E from "Individual and Family Grant Programs" to "Reserved"	No	D	None.	None.	None.
§ 206.110(b)	Replaces "limit" with "limits" grammar	No	D	None.	None.	None.
§ 206.110(a) § 206.110(h) § 206.110(i)(2) § 206.110(i)(2)(ii) § 206.110(j)(2) § 206.110(k)(3)(i) § 206.113(a)	U.S.C. cite instead of Stafford Act (SA) section	No	D	None.	None.	None.

[384] Regulatory text cites in 44 CFR, unless otherwise stated.
[385] Mandatory actions are marked as "M" and discretionary actions are marked as "D."
[386] Impacts listed under Costs/Cost Savings, Benefits, and Transfer apply under a no-action and pre-guidance baseline, unless otherwise stated.

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.115(a) § 206.119(b)(9) § 206.119(b)(9)(i) § 206.191(a) § 206.191(d)(2)(ii) § 206.191(d)(2)(iii) § 206.191(e)(3) § 206.191(e)(5)						
§ 206.110(a)	Adds “, as amended (Stafford Act)”	No	D	None.	None.	None.
§ 206.110(k)(2)	Replaces “(*See* 44 CFR part 59.1)” with “(See 44 CFR 59.1)”	No	D	None.	None.	None.
§ 206.110(m)	Replaces “section 106 of” with ”54 U.S.C. 306108”	No	D	None.	None.	None.
§ 206.110(a)	Removes DMA2K amendment to SA as outdated	No	D	None.	None.	None.
§ 206.110(c) § 206.110(i)(1) § 206.110(i)(2) § 206.110(i)(2)(i) § 206.110(i)(2)(ii) § 206.110(j)(2)(ii)	Plain language revisions	No	D	None.	None.	None.

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.113(a)(4) § 206.119(b)(9) § 206.119(b)(9)(i) § 206.119(b)(9)(i) § 206.119(b)(9)(ii) § 206.191(b)(1) § 206.191(e) § 206.191(e)(2) § 206.191(e)(2)(iii) § 206.191(e)(3) § 206.191(e)(4) § 206.191(e)(4)(ii) § 206.191(e)(4)(ii) § 206.191(e)(5) § 206.191(e)(5) § 206.191(e)(5)						
§ 206.110(e)	Replaces "Disaster Assistance" with "Recovery" before "Directorate" as outdated; Replace "this" with "the" and insert "of assistance" after "period" to align with the paragraph heading of (e) *period of assistance*	No	D	None.	None.	None.
§ 206.113(a)(5)	Replaces "needs" w/ "need" grammar	No	D	None.	None.	None.

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.117(b)(1)(ii)(E)*(4)*	Replaces "determines" w/ "determined" grammar	No	D	None.	None.	None.
§ 206.110(k)(3)(i) § 206.117(b)(2)(iv)	Replaces "damages" w/ "damage" grammar	No	D	None.	None.	None.
§ 206.191(e)(3)	Replaces "programs" w/ "program's" grammar	No	D	None.	None.	None.
§ 206.117(b)(2)(iv) § 206.117(b)(2)(vi) § 206.117(b)(3)(i)(A) § 206.117(b)(3)(ii) § 206.117(b)(3)(iii) § 206.117(b)(3)(iv) § 206.117(b)(4)(i)(A) § 206.117(b)(4)(iii)	Removes "of this part"	No	D	None.	None.	None.
§ 206.117(b)(1)(ii)(E)*(1)-(3)*	Remove superfluous phrase "then Federal assistance may be authorized for such actions"	No	D	None.	None.	None.
§ 206.117(b)(1)(ii)(H)*(4)*	Adding "semicolon or" at the end of the phrase	No	D	None.	None.	None.
§ 206.118(a)(1)(i)	Replacing "comma" after "permanent housing" with "and" and replacing "has" w/ "have for grammar purposes	No	D	None.	None.	None.
§ 206.191(f)	Adding cross-reference to 31 CFR chapter IX joint	No	D	None.	None.	None.

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
	Department of the Treasury & DOJ regs					
Codification of Existing Policy and Practice						
§ 206.110(b)	Adds clarification that maximum amount of assistance is "for repair or replacement of their pre-disaster primary residence." Sec. 1212 of DRRA removed Temporary Housing Assistance from any financial maximum and separated ONA so that it has its own maximum.	Yes, implemented 2019 via policy memoran-dum[387]	M	None.	No-action baseline: Improve clarity and align FEMA regulations with statutory changes. Pre-guidance: Ensures applicants with the most severe disaster damage may still have funds available to address needs.	No-action baseline: None. Pre-guidance baseline: Increases transfers from FEMA to applicants by $7,800,713 per year. Cross Reference 206.110(b)(1) below.
§ 206.110(b)(1)	Maximum amount of financial assistance excludes rental assistance & LER sec. 1212 of DRRA.	Yes, implemented 2019 via policy memoran-dum[388]	M	None.	No-action baseline: Improve clarity and align FEMA regulations	No-action baseline: None. Pre-guidance baseline: Increases transfers from FEMA to applicants by $1,230,456 per year.

[387] Retroactive to August 1, 2017
[388] Retroactive to August 1, 2017

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
					with statutory changes. Pre-guidance baseline: Allows for greater assistance to address applicant temporary housing needs.	
§ 206.110(b)(2)	Maximum amount of financial assistance excludes repair or replacement accessibility-related real property improvements & personal property sec. 1212 of DRRA	Yes, implemented 2019 via policy memoran-dum[389]	M	None.	See above § 206.110(b).	See above § 206.110(b).
§ 206.111	Definitions: "Alternative housing resources;" replacing one example used w/term from "mobile homes" to "manufactured housing units" align w/HUD regs and FEMA use	Yes	D	None.	None.	None.
§ 206.111	"Destroyed;" new definition more succinct; different from IAPPG definition	Yes	D	None.	None.	None.
§ 206.111	"Financial ability;" FEMA removes the comparison between pre-disaster and post-disaster income to determine	Yes – since 2002.	D	None.	None.	None.

[389] Retroactive to August 1, 2017

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
	financial ability to pay. FEMA codifies its current practice that all applicants requesting Continued Temporary Housing Assistance have the financial ability to pay up to 30 percent of their income toward housing to all applicants requesting CTHA, which FEMA has been applying since 2002 to treat applicants consistently					
§ 206.111	Revise definition of "Housing costs" to add "homeowners or condominium association fees." Current CTHA lists the current definition of "housing costs."	Yes	D	None.	None.	None.
§ 206.111	"Owner-occupied" revises definition to describe types of documents that may be used to verify whether applicant's primary residence is owner-occupied	Yes – implemented 2021 via Memoran-dum	D	None.	None.	None.
§ 206.111	"State" new term; "State" as defined in § 206.2(a)(22) or Indian Tribal government as defined SA	Yes	D	None.	None.	None.
§ 206.112(b) § 206.115(c) § 206.115(e) § 206.117(b)(1)(i)(A) § 206.117(b)(1)(ii)(B) § 206.117(b)(1)(ii)(E)*(1)*	Replaces "Regional Administrator or his/her designee" w/ "FEMA" to ensure continued consistency in processing across disasters at the national level	Yes	D	None.	None.	None.

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.117(b)(1)(ii)(E)*(2)* § 206.117(b)(1)(ii)(E)*(3)* § 206.117(b)(1)(ii)(E)*(4)* § 206.117(b)(1)(ii)(I) § 206.117(b)(3)(ii) § 206.191(e)(1)(i) § 206.191(e)(2) § 206.191(e)(2)(iii) § 206.191(e)(3) § 206.191(e)(4) § 206.191(e)(4)(i) § 206.191(e)(4)(i) § 206.191(e)(4)(ii) § 206.191(e)(4)(ii) § 206.191(e)(4)(ii) § 206.191(e)(4)(ii) § 206.191(e)(5)	Revises "the FEMA Regional Administrator" to "FEMA" Revises "the Regional Administrator" to "FEMA"					
§ 206.191(e)(3) § 206.191(e)(5)	Removes "the coordination of the Federal Coordinating Officer (FCO) and" Replaces "the Regional Administrator and the FCO" w/ "FEMA"	Yes	D	None.	None.	None.

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.191(e)(5) § 206.191(e)(5) § 206.191(e)(5)	Replaces "his/her" w/ "its" Replaces "him/her" w/ "FEMA" Replaces "its" w/ "the agency's"	Yes	D	None.	None.	None.
§ 206.113(a)(1)	Replaces "or" w/ "and" since FEMA has always allowed applicants to receive assistance for both a necessary expense and a serious need.	Yes	D	None.	None.	None.
§ 206.113(a)(5)	Replaces the "or" in "necessary expenses or serious needs" with "and," which has no practical effect because a necessary expense is defined as whatever it costs to fix a serious need.	Yes	D	None.	None.	None.
§ 206.114(a)	Removes clause "but not to exceed the maximum amt of assistance for the program" as 1212 of DRRA removed financial assistance max award limits for CTHA	Yes, implemented 2019 via policy memoran-dum[390]	M	See above § 206.110(b)(1).	See above § 206.110(b)(1).	See above § 206.110(b)(1).
§ 206.114(d)(2)	Adds "child care," as section 1108 of the SRIA established child care as an eligible expense under the ONA provision of the IHP. Currently, FEMA implements thru IAPPG.	Yes, 2014 implemented via policy	M	No-action baseline: None. Pre-guidance baseline: Increases applicant burden costs by $593 per year.	No-action baseline: Improve clarity and align FEMA regulations with statutory changes. Pre-guidance baseline: Increases	No-action baseline: None. Pre-guidance baseline: Increases transfers from FEMA to applicants by $18,278 per year and increases transfers from the State to applicants by $5,835 per year.

[390] Retroactive to August 1, 2017

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
					eligibility for child care reducing care disruptions for families.	
§ 206.119(b)(4)	Adds "child care," as section 1108 of the SRIA established child care as an eligible expense under the ONA provision of the IHP. Currently, FEMA implements thru IAPPG.	Yes, 2014 implemented via policy	M	See above § 206.114(d)(2).	See above § 206.114(d)(2).	See above § 206.114(d)(2).
§ 206.119(b)(4)(i)-(ii)	Adding child care expenses under ONA; as section 1108 of SRIA established child care as an eligible expense under the ONA provision of the IHP. Currently FEMA implements thru IAPPG.	Yes, 2014 implemented via policy	D	See above § 206.114(d)(2).	See above § 206.114(d)(2).	See above § 206.114(d)(2).
§ 206.117(a)	Adds defined term "Multifamily Rental Housing" section 1103 of SRIA established authority and 1213 of DRRA reaffirmed authority; defined page 105 of IAPPG, January 1, 2019, except for the clarifying phrase "contained within one building." See also 206.117(b)(1)(ii)(F).	Yes, 2019 implemented via policy	D	None.	No-action baseline: Improve clarity and align FEMA regulations with statutory changes. Pre-guidance baseline: Increases flexibility and eligible capacity of temporary	No-action baseline: None. Pre-guidance baseline: Reduces transfers from FEMA to applicants by $1,262,854 per year.

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
					housing for applicants.	
§ 206.117(b)(1)(i)(C)	Section 689d PKEMRA allows rental assistance to include payment of the cost of utilities, excluding telephone service. FEMA implemented this change via page 80 of IAPPG which distinguishes between essential & non-essential utilities further excluding cable, TV, and internet service	Yes, 2011	D	None.	No-action baseline: Improve clarity and align FEMA regulations with statutory changes. Pre-guidance baseline: Increases assistance flexibility to better help survivors recover.	No-action baseline: None. Pre-guidance baseline: Increases transfers from FEMA to applicants by $121,220 per year.
§ 206.117(b)(1)(i)(D)	Section 689d PKEMRA allows for the payment of security deposits, currently implemented via page 84 of IAPPG, so FEMA limits security deposits to one month's rent, if applicable	Yes, 2013 via processing guidance memorandum	D	None.	No-action baseline: Improve clarity and align FEMA regulations with statutory changes. Pre-guidance baseline: Increases assistance flexibility to better help	No-action baseline: None. Pre-guidance baseline: Increases transfers from FEMA to applicants by $368,766 per year.

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
					survivors recover.	
§ 206.117(b)(1)(ii)(F) § 206.117(b)(1)(ii)(F)*(1)* § 206.117(b)(1)(ii)(F)*(2)*	Sec. 1103 of SRIA established FEMA's authority to lease and repair rental units for temporary housing of applicants and sec.1213 of DRRA reaffirmed this authority; Adds new Multifamily Lease and Repair paragraphs to codify IAPPG	Yes, 2019 implemented via policy	D	See above § 206.117(a).	See above § 206.117(a).	See above § 206.117(a).
§206.117(b)(2)(iii)	Adds in some instances, when the extent of the damage is unclear, FEMA may provide assistance for the average cost of a licensed technician's professional assessment	Yes, implemented by policy since 2000	D	None.	No-action baseline: Improve clarity and align FEMA regulations with current practice. Pre-guidance: Increases assistance to ensure complete information of damage and reduce a barrier for lower income applicants.	No-action baseline: None. Pre-guidance baseline: Increases transfers from FEMA to applicants by $2,092,671 per year for professional assessments.

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.113(a)(9)(i)	Added w/respect home repair accessibility-related items if applicant an individual w/a disability as defined in 42 U.S.C. 5122 whose disability was caused by disaster as	Yes, implemented by policy 2022	D	None.	No-action baseline: Improve clarity and align FEMA regulations with current practice. Pre-guidance baseline: May increase assistance equity for those disaster survivors with a disability.	No-action baseline: None. Pre-guidance baseline: FEMA was unable to estimate the number of individuals with disaster-caused disabilities that would be eligible for assistance.
§ 206.114(d)(1)	Codifies Chapter 3: C.*2*. of IAPPG 1.1, which is narrower by stating that an applicant may receive a letter requesting additional information, language says FEMA may request additional information	Yes	D	None.	None.	None.
Current § 206.115(e)	Remove current paragraph (e): The appropriate FEMA or State program official will notify the applicant in writing of the receipt of the appeal within 90 days of receiving the appeal.	Yes	D	None.	None.	None.
§ 206.115(e)	Adds "a reason for the determination" before "within	Yes	D	None.	None.	None.

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
	90 days of receiving the appeal."					
§ 206.191(d)(2)(iv)	Replace "Farmers Home Administration" w/ "Department of Agriculture" before "disaster loans, as "Farmers Home Administration" no longer exists	Yes	D	None.	None.	None.
§ 206.191(f)	Adds reference to waiver authority from sec. 1216 of DRRA[391] implemented via Instruction 116-1-2: Individuals & Households Program Recoupment Policy	Yes, implemented 2019 via Waiver Information Sheet[392]	D	No-action baseline: None. Pre-guidance baseline: Increases FEMA costs by $460 per year and increases applicant costs of 385 per year.	No-action baseline: Improve clarity and align FEMA regulations with current practice. Pre-guidance baseline: Reduces repayment burden for applicants with FEMA caused overpayments.	No-action baseline: None. Pre-guidance baseline: Increases FEMA transfers to applicants estimated at $52,284 per year.
Nonsubstantive Clarifications						

[391] To implement the Disaster Recovery Reform Act of 2018, Pub. L. 115-254, 132 Stat. 3449 (Oct. 5, 2018), as amended by the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Public Law 117-263, 136 Stat. 3404 (Dec. 23, 2022), 42 U.S.C. 5174, FEMA will update Instruction 116-1-2: Individuals & Households Program Recoupment Policy. FEMA will now waive debts due solely to FEMA error without any need for applicants to request a waiver. This will simplify FEMA's current recoupment process. FEMA plans to implement the new process by the end of 2023.

[392] Retroactive to October 28, 2012.

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.110(d)	Clarifies that the damage must have occurred during the incident period, not necessarily all the losses or expenses	No	D	None.	None.	None.
Current § 206.110(h)(2)	Removes that "applicable benefits are exhausted" as a condition for assistance since an applicant does not have to exhaust benefits	No	D	None.	None.	None.
§ 206.110(h)(3)	Revises "housing is not available" to "applicants cannot use their insurance because there is no housing on the private market" for clarity	No	D	None.	None.	None.
§ 206.110(i)(2)(ii)	Adds "is 25 percent and" and "assistance" for clarity; replaces "Bill for Collection" with "billing notice" and replaces "fees" or "administrative fees' with "administrative costs" for clarity	No	D	None.	None.	None.
§ 206.110(k)(3)(i)(A)	Adds "there is a residential building (See 44 CFR 59.1) at" before "the address" and removing "exists" for clarity	No	D	None.	None.	None.
§ 206.110(m) § 206.115(b)	Updates cross references, replaces "is exempted from review in accordance with section 106 of" with "FEMA has no further obligations under" before "the National Historic Preservation Act," & adds a cross reference Adds cross reference here since §§ 206.117(b)(2)(vi),	No	D	None.	None.	None.

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
	206.117(b)(3)(iv), and 206.117(b)(4)(iii) include cross references to § 206.115					
§ 206.111	Definitions: "Dependent:" Removes "actually" from before "claim"	No	D	None.	None.	None.
§ 206.111	Definitions: " Displaced applicant;" adds "disaster damaged;" removes ineligibility factors listed in 206.113 as unnecessary & repetitive; removes functional as there is no requirement for the home not to be functional; and removes "(to meet their disaster housing need)"	No	D	None.	None.	None.

44 CFR[384]	Change	Implemented	Action Type [385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.111	"Eligible hazard mitigation measures:" replace "essential components of the home" to "the primary residence, utilities, or infrastructure" for clarity & consistency w/ § 206.117(b)(2)(ii)(H)	No	D	None.	None.	None.
§ 206.111	"Fair market rent:" deletes a phrase from each of the two sentences that are part of the definition and adds "geographic" before "area" and adds phrase "estimates of rent plus the cost of utilities, except telephone" to more closely mirror HUD's definition of FMR	No	D	None.	None.	None.
§ 206.111	"Manufactured housing sites:" Removes the phrase "government or privately owned mobile homes" & adding language to the definition for clarity and consistency w/current HUD regs and § 206.117(b)(1)(ii)(E)*(4)*}, which describes when FEMA provides a "group site"	No	D	None.	None.	None.

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.111	Permanent Housing Plan revises definition to include displaced applicant and adds "within the period of assistance," "services to repair the home," & "completing repairs"	No	D	None.	None.	None.
§ 206.111	"Reasonable commuting distance" revise example from "bridges out" to "road closures" as not grammatically correct	No	D	None.	None.	None.
§ 206.113(b)(2) § 206.113(b)(3) § 206.114(a) § 206.117(b)(1)(ii)(B) § 206.117(b)(1)(ii)(C) § 206.117(b)(1)(ii)(E)	Adds "temporary" before "housing assistance;" Adds "temporary" between "continued housing;" Replaces "residence" with "temporary housing unit" Adds "temporary" Adds "temporary housing"	No	D	None.	None.	None.

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.117(b)(1)(ii)(E)*(3)*	Adds "temporary housing"					
§ 206.117(b)(1)(ii)(H)*(4)*	Adds "temporary"					
§ 206.118(a)						
§ 206.118(a)(1)(i)	Replaces "sale" with "FEMA may sell a temporary housing unit"					
§ 206.118(a)(1)(ii)						
	Adds "temporary"					
§ 206.118(a)(1)(iii)	Replaces "home or" w/ "temporary housing"					
§ 206.118(a)(2)(i)	Adds "temporary"					
§ 206.118(a)(2)(i)(B)	Adds "temporary housing"					
§ 206.118(a)(2)(ii)	Adds "temporary housing"					
	Adds "temporary housing"					
§ 206.118(b)	Adds "temporary"					
	Adds "temporary housing"					
§ 206.118(b)	Adds "temporary housing"					
	Revise "he/she" to "they" and add "installation of the" before "temporary housing unit"					
§ 206.113(b)(4)	This is intended to point to applicants that did not receive damage that impacted habitability and can return and live in their home immediately. Removing "who" before "are"	No	D	None.	None.	None.

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.113(b)(5)	*Conditions of ineligibility.* Restructured last part of sentence into subparagraphs (i)-(ii) adds "Improvements or additions" before "required" and adds to "make repairs that" before "comply" to comply w/local & State ordinances. Replaced "eligible mitigation measures" with "eligible hazard mitigation measures" is the defined term[393]	No	D	None.	None.	None.
§ 206.113(b)(10)	FEMA replaces "this section" with "§§ 206.117 and 206.119," since § 206.113 does not actually authorize any items	No	D	None.	None.	None.
§ 206.114(a)	Adds "initial and," before "continued" and adds "financial or direct, after "assistance"	No	D	None.	None.	None.
§ 206.114(b)(1)	Clarifies that as a condition of CTHA eligibility displaced applicants awarded initial rental assistance	No	D	None.	None.	None.
§ 206.117(b)(1)(i)	Replaces "Financial" assistance with "Rental" assistance	No	D	None.	None.	None.
§ 206.114(a) § 206.114(b)	Replace "Criteria for continued assistance" w/"Criterial for continued or additional assistance" Replaces "Additional criteria for continued assistance" heading with "Rental assistance"	No	D	None.	None.	None.

[393] Section 206.113(b)(5)(iii) is listed under the Substantive Changes-Home Repair Accessibility-Related Items portion of the Marginal Analysis Table.

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.118(a)(1)(ii)	Removes "adjustment to the sales price" heading					
§ 206.119(b)(4)	Adds "Personal property" heading					
§ 206.119(b)(7)	Adds "Transportation" heading					
§ 206.119(b)(10)	Revises "Other" to "Miscellaneous"					
§ 206.119(b)(3)	Replaces "Medical expenses" w/ "Medical and dental" heading					
§ 206.119(b)(4)	Replaces "Funeral expenses" with "Funeral" heading					
§ 206.119(b)(1)	Adds "Serious needs" heading					
§ 206.119(b)(2)	Adds "Displacement" heading					
§ 206.119(b)(5)	Replaces "Moving and storage expenses" w/ "Moving and storage" heading					
§ 206.115(b)	Remove "him, her, or" before "them;"	No	D	None.	None.	None.

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.115(d)	Reorder sentence to: if someone other than the applicant files the appeal, then the applicant must also submit a signed statement giving that person authority to represent Replace "him or her" with "them"					
§ 206.114(d)(2)	Replaces "Individual or households" with "Applicants"	No	D	None.	None.	None.
§ 206.117(b)(1)(i) § 206.117(b)(1)(ii)(A) § 206.118(a)(2)(i) § 206.191(d)(4) § 206.191(d)(4)(ii)	Replaces "individuals and households" with "displaced applicants" Replaces "disaster victims" w/ eligible displaced applicants Replaces "a disaster victim" w/ "an individual or household" Replaces "disaster victim" w/ individual or household and adds "Agency A must"	No	D	None.	None.	None.
§ 206.114(d)(2)	Replaces "continuing" with "additional," as there is not a continuing need for repair assistance, rather an "additional" need of repair assistance. Adds "repair, replacement, lodging expense	No	D	None.	None.	None.

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
	reimbursement" before "personal"					
§ 206.115(e)	Adds "FEMA or State" appellate authority is final	No	D	None.	None.	None.
§ 206.117(b)(1)(i)	Remove "existing rental units, manufactured housing, recreational vehicles, or other readily fabricated dwellings" after "alternate housing resources" as that is part of the definition of the defined term "alternate housing resources."	No	D	None.	None.	None.
§ 206.117(b)(1)(i)(B)	Replaces "rental" assistance with "amount of" assistance; removes HUD as HUD is identified in definition of "fair market rate;" replaced "rates" with "rent;" and restatement of FEMA's current process of determining the number of bedrooms a household requires	No	D	None.	None.	None.
§ 206.117(b)(1)(ii)(G)	Adds "fair market" before rent	No	D	None.	None.	None.
§ 206.117(b)(1)(ii)(E)*(3)*	Revised word order of the beginning of sentence to "a group site that accommodates two or more temporary housing utilities and is complete with utilities, provided by the State or local government," before "when."	No	D	None.	None.	None.

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.117(b)(2)(ii)(H)	Removes the clause "items or services determined to be" used to described eligible hazard mitigation measures as FEMA never defined "items or services" related to hazard mitigation measures and removing the term does not change the intention of the sentence; Removes "that reduce the likelihood of future damage to the residence, utilities, or infrastructure" as this is part of the definition of the defined term "Eligible hazard mitigation measures."	No	D	None.	None.	None.
§ 206.117(b)(4)(i)(E) and § 206.117(b)(4)(iii)	FEMA removing "located" as it is repetitive and removing the phrase an "insular area outside the continental United States" as a simplifying edit for clarity. There is no reason to include the phrase as, the point is that the residence is in a location where no alternative housing resources are available.	No	D	None.	None.	None.
§ 206.118(a)(1) § 206.118(a)(1)(i) § 206.118(a)(1)(i)	Replaces "applicant" w/ "occupant" Replaces "individual or household" w/ "occupant" Replaces "the occupant" w/ "they"	No	D	None.	None.	None.

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.118(a)(1)(ii) § 206.118(a)(1)(ii)	Replaces "purchaser" w/ "occupant" Replaces "applicant" w/ "occupant"					
§ 206.119(b)(9) § 206.119(b)(9)(ii) § 206.119(b)(9)(ii)	Replace "Other Needs" w/ "for flood insurable damage" Replace "an Other Needs award" w/ "assistance for flood-insurable losses within a SFHA" Remove "Other Needs"	No	D	None.	None.	None.
Substantive Changes-Habitability						
§ 206.111	"Functioning" replaces current "functional"	No	D	None.	None.	None.
§ 206.111	"Repairs" new term which aligns w/revisions to repair section, § 206.117(b)(2)	No	D	None.	None.	None.
§ 206.111	"Safe" and "Sanitary" revises definitions by removing "disaster-related;" crux of expanding FEMA IHP regulations to be more equitable.	No	D	None.	None.	None.

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
	Definitions align with revisions discussed in § 206.117(b)(2)					
§ 206.111	"Uninhabitable" revises definition by adding "or" before "sanitary" and removing "fit to occupy" as SA only uses "safe or sanitary"	No	D	None.	None.	None.
§ 206.117(a)	Removes defined term "caused by the disaster" since FEMA is paying for pre-existing conditions if the component itself was damaged by the disaster, Definition aligns with revisions discussed in § 206.117(b)(2)	No	D	None.	None.	None.
§ 206.117(a)	Revises defined term "Real property component" or "Component" by removing "that makes it habitable"	No	D	None.	None.	See § 206.117(b)(2)(ii).
§ 206.117(b)(1)(i)	Revisions to clarify that LER is distinct form of financial assistance from Rental Assistance; LER is only eligible to displaced applicants who have not received displacement assistance.	No	D	None.	None.	None.
§ 206.117(b)(2)(i)-(ii)	*Repairs.* Whether or not the "component" makes the dwelling habitable would be immaterial. The overarching eligibility requirement for housing assistance would be whether or not the home is uninhabitable. Once an applicant has hit that	No	D	None.	Support low income and other vulnerable disaster survivors who may not have the means to	Increase transfers from FEMA to applicants by $14,228,959 per year.

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
	threshold, we are simplifying IHP to pay for all components listed in (b)(2)(ii) with disaster damage and then repair those components "to" a safe, sanitary, & functioning condition.				immediately address disaster damage.	
§ 206.117(b)(2)(i) and (b)(3)(i)	Replacing "owner's" w/ "owner-occupied" as "owner-occupied" defined term § 206.111	No	D	None.	None.	None.
§ 206.117(b)(2)(iii)	Financial assistance for repairs will be limited to repairs quality necessary to make the home safe and sanitary living or function condition. Would no longer limit to average quality, size, and capacity.	Yes	D	None.	None.	See § 206.117(b)(2)(i)-(ii).
Current § 206.117(b)(2)(iv) and Second sentence of current § 206.117(b)(2)(vii)	Removing current paragraph 206.117(b)(2)(iv) & 2nd sentence of 206.117(b)(2)(vii) due to FEMA's policy change to provide assistance to repair or replace a disaster-damaged component, room, or area as long as the real property component incurred disaster damage, including damage that was worsened by the disaster and requires repair or replacement to make the home habitable	No	D	None.	None.	See § 206.117(b)(2)(i)-(ii).
§ 206.117(b)(2)(vi)	Removing from the 2nd sentence the clause "including that the component was functional before the declared event and proof that the declared event	No	D	None.	None.	See § 206.117(b)(2)(i)-(ii).

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
	caused the component to stop functioning"					
§ 206.117(b)(3)(i)	*Housing replacement.* Revisions align with the policy changes that the residence does not have to be functional immediately before the disaster and that all of the damage to the residence was caused by the disaster since FEMA is paying for pre-existing damage.	No	D	None.	None.	See § 206.117(b)(2)(i)-(ii).
§ 206.117(b)(3)(iii)	FEMA's clarifying revisions are to help the public understand that since FEMA has already said that the residence must be destroyed or can't be repaired, that FEMA will pay average replacement assistance cost established by FEMA for the type of residence destroyed.	No	D	None.	None.	None.
§ 206.117(b)(3)(iv)	FEMA removing the clause "or make the residence functional" based on the policy changes that FEMA has previously discussed in this IFR that the residence no longer has to be functional.	No	D	None.	None.	See § 206.117(b)(2)(i)-(ii).
Current § 206.117(b)(4)(i)(B)	*Permanent and semi-permanent housing construction.* FEMA deleting the clause that states that the residence was functional immediately before the declared event, based upon the policy changes that the	No	D	None.	None.	See § 206.117(b)(2)(i)-(ii).

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
	residence no longer has to be functioning immediately before the declared event.					
Substantive Changes-CTHA						
§ 206.111	Housing costs revises definition to add "homeowners or condominium association fees"	Yes	D	None.	Codifying clarification.	None.
§ 206.111	"Permanent Housing Plan" revises definition to include displaced applicant and adds "within the period of assistance," "services to repair the home," & "completing repairs"	No	D	None.	To better ensure that applicants are prepared for a transition away from FEMA temporary housing assistance and towards a more permanent housing solution.	None.
§ 206.111	"Recertification;" new defined term used in various places in IAPPG. Under the rule, recertification period changing to two CTHA payments after initial assistance compared to currently applicants recertify in 3-month increments after their initial rental assistance award	No	D	None.	None.	None.

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.114(a) § 206.117(b)(1)(i)(E)	Adds "upon request" before "during" Adds applicants that receive displacement assistance under § 206.119(b)(2) must request rental assistance if their disaster-caused temporary housing needs continue once displacement assistance is exhausted	No	D	None – Applicants must currently apply for rental assistance.	None.	None.
§ 206.114(b)-(d)	Reorganization of FEMA's current regs, instead of conflating regs so that eligibility, non-eligibility and criteria for different types of assistance all in one paragraph, separating assistance into paragraphs w/headings of: "Rental assistance," "Direct housing assistance," Other assistance"	No	D	None.	None.	None.
§ 206.114(b)(1)(iii) § 206.114(b)(1)(iv)	Replaces current requirement that all applicants must establish PHP no later than 1st certification of CTHA Applicants must provide documentation showing making efforts to obtain permanent housing	No	D	Reduces applicant costs by $870,862 per year and reduces FEMA costs by $7,220 per year.	Lessens administra-tive burdens on applicants.	None.
§ 206.114(b)(1)(i)	Less limiting in that funds may be awarded prior to exhaustion to prevent a gap in assistance, but still intent that applicant must exhaust their funds	No.	D	None.	None.	None.

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.114(b)(1)(ii)	Language is to tie it back to the "financial ability" definition of the standard.	Yes. 2002	D	None.	No-action baseline: Clarify and align with current practice. Pre-guidance baseline: More accurately measures eligibility of applicants' post-disaster financial situation.	No-action baseline: None. Pre-guidance baseline: Increases transfers from FEMA to applicants by $28,516,620 annually.
§ 206.114(b)(2)	Language is closer to Stafford Act language	No	D	None.	None.	None.
§ 206.114(d)(2)	Adds a cross reference to the 206.115 appeal regs to help applicants that want to apply for continued or additional assistance. Also changes to allow applicants to know that the documentation they submit to support their requests must be verifiable and that the IAPPG lists types of acceptable documentation.	No	D	None.	None.	None.

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
Substantive Changes-ONA						
§ 206.111	Revises definition "Serious need" to replace "essential" w/ "necessary" to align SA and lower the bar for applicants	No	D	See below § 206.119(b)(1).	See below § 206.119(b)(1).	See below § 206.119(b)(1).
§ 206.113(b)(1) § 206.113(b)(2) § 206.113(b)(3) § 206.113(b)(4)	Adding "or displacement" before "assistance" to state ineligibility for new displacement assistance. Adding "temporary" before "housing" for clarity and adding "or displacement" before "assistance" to state ineligibility for new displacement assistance. For the same reasons as above, adding "temporary" before "housing" and adding "or displacement" before "assistance" For the same reasons, adding "temporary" before "housing," "or displacement" before "assistance." also adding "and safely occupy" before "the residence immediate after the incident" for clarity.	No	D	None.	None.	None.
§ 206.119(a)	Adds clause "Are adversely affected by a major disaster and" after "who" & "verifiable, documented" before "disaster-	No	D	None.	None.	None.

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
	related necessary expenses or serious needs"					
§ 206.119(b)(3)(i)-(v)

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.119(b)(8)	and to parallel the language in § 206.119(b)(3). *Transportation.* Removing "or serious needs" after "necessary expenses" and removing "for" before "transportation" for clarity; adding the clause "to assist applicants with the" before "transportation" and adding "costs" after "transportation" for clarity; removing "are generally limited to the following" and adding "which may include" before "the following" for clarity and to parallel the language in § 206.119(b)(3); and removing "and" in current § 206.119(b)(7)(i), removing "financial assistance for" before "public," moving the clause "any other transportation related costs or services" from current § 206.119(b)(7)(ii) to 206.119(b)(7)(iii) *Moving and storage.* FEMA reorganized this paragraph to include three subparagraphs so that it follows the format of the other paragraphs in this section. Removing "and serious needs" after "necessary expenses," and adding the clause "to assist applicants whose primary					

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
	residences were damaged by the disaster with costs" before "related to moving and storing personal property" for clarity and replacing "generally" with "may."					
§ 206.119(b)(1)	New reg text that follows FEMA's new serious needs assistance that receipts documenting use of this assistance are not required, & future changes to SNA based on the CPI for all Urban Consumers that the Department of Labor publishes.	No	D	None.	Provides more flexibility for eligible expenses to applicants.	Increases transfers from FEMA to applicants by $157,447,886 per year and increases transfers from States to applicants by $52,482,628 per year.
§ 206.119(b)(2)	New reg text that follows FEMA's new displacement assistance, setting forth what the assistance is intended to cover, dates for application, and that receipts documenting use of this assistance are not required.	No	D	None.	Provides more flexibility for eligible expenses to applicants.	Increases transfers from FEMA to applicants by $165,739,157 per year and increases transfer from States to applicants by $55,246,386 per year.
§ 206.119(b)(6)(iii)	New subparagraph assistance for personal "computing devices"	No	D	None.	Provides additional assistance for a computing device to help applicants recover more quickly.	Increases transfers from FEMA to applicants by $35,863,425 per year and increases transfer from States to applicants by $11,954,475 per year.

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.119(b)(6)(iv) & (v)	Replaced "computers" w/"computing devices"	No	D	None.	None.	None.
Substantive Changes-Insurance Proceeds						
§ 206.113(a)(4) current paragraph	Removes current paragraph re: applicants w/insurance, when insurance proceeds are less than max amt IHP & proceeds insufficient to cover necessary expenses or serious needs	No	D	None.	Addresses unmet needs of uninsured and underinsured applicants more equitably.	Increases transfers from FEMA to applicants by $1,574,683 per year.
§ 206.113(a)(5)	Update to allow for more equity when assessing unmet needs of applicants by comparing net insurance settlement amount to FEMA Verified Loss amount	No	D	None.	See § 206.113(a)(4).	See § 206.113(a)(4).
Substantive Changes-Appeals						
§ 206.115(b)	Replaces "be in writing and explain the reason(s) for the appeal" with "include a written explanation or verifiable documentation for the appeal" to reduce the complexity, streamline the process, reduce FEMA processing time, and decrease the burden on	No	D	Reduces costs to applicants by $861,338 annually.	Provides a more equitable and efficient appeal process.	Increases transfers from FEMA to applicants by $10,709,760 annually.

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.115(b)	applicants to successfully appeal a determination. If a written explanation is submitted, it must be signed by the applicant or a person the applicant designates to represent them. Clarification that if applicant submits a written explanation it must be signed but verifiable documentation does not have to be signed					
Substantive Changes-SBA						
Current § 206.119(a)(1)-(3)	Removes regulatory text referencing application to the SBA in order to qualify for assistance under this section, as the removal of the designation of "SBA-dependent ONA" allows FEMA to provide all eligible applicants ONA regardless of loan repayment worthiness.	No	D	None.	§ 206.191(d)(2)(iii)-(iv).	See § 206.191(d)(2)(iii)-(iv).

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.191(d)(2)(iii)-(iv)	Reorganizes delivery sequence	No	D	Reduces applicant costs (cost savings) by $2,029,273 per year and reduces SBA costs by $3,877,763 per year due to fewer loan applications being submitted and processed. Increases the number of applicants eligible for GFIP, resulting in applicant costs of $334,300 per year and FEMA costs of $578,934 annually.	Reduce applicant administrative burdens and provides greater access to disaster assistance.	Increases transfers from FEMA to applicants by $116,663,362 and increases transfers from States to applicants by $38,887,788 annually.
Substantive Changes- Home Repair Accessibility-Related Items[394]						

[394] For pre-existing disabilities.

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.113(a)(9)	Added w/respect home repair accessibility-related items if applicant individual w/a disability as defined in 42 U.S.C. 5122 whose disability existed prior to disaster & whose primary residence was damaged by the disaster.	No	D	Increases applicant burden cost at $10,982 per year and FEMA cost at $13,122 per year.	Increases assistance equity for those disaster survivors with a disability by addressing unmet ADA needs.	Increases transfers from FEMA to applicants at $5,737,814 per year.
§ 206.113(b)(5)(iii)	Via information collection 1660-0002, medical, health care provider, or rehabilitation professional tell us whether or not home repair accessibility-related items are needed to meet the household's access and functional need or we will accept prior medical, health care provider, or rehabilitation professional documentation that supports the need for the accessibility-related items.					
§ 206.117(b)(2)(ii)	Added subparagraphs to § 206.113(b)(5) which lists what is excepted from FEMA not providing housing assistance or accessibility-related items for individuals with disabilities, consistent with § 206.113(a)(9).					
	Adding "the disaster damaged dwelling" before "to a safe and sanitary living or functioning condition" in Home Repair Assistance to adjudicate 4 RFI					

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
	comments,[395] so that FEMA may make the dwelling safe/sanitary for pre-disaster disabled applicants.					
Substantive Changes-Self-Employed Essential Tools						
§ 206.113(b)(9)	Removes "and self-employment" so gig workers may be eligible for essential tools such as the items required for their job; addresses 2 RFI comments[396]	No	D	None.	Provides additional assistance to self-employed disaster survivors improving assistance equity.	Increases transfers from FEMA to applicants by $3,932,536 per year and additional transfers from States to applicants of $1,310,845 per year.
§ 206.119(b)(6)(iv)	Adding "computing devices" after "protective clothing" to allow them as eligible costs if the computing devices are for employment, and replacing "by an employer as a condition of" with "for" to reflect FEMA's policy change regarding self-employed essential tools.	No	D	See § 206.113(b)(9).	See § 206.113(b)(9).	See § 206.113(b)(9).

[395] FEMA-2021-0011-0152, FEMA-2021-0011-0164, FEMA-2021-0011-0235, and FEMA-2021-0011-0261.
[396] FEMA-2021-0011-0187 and FEMA-2021-0011-0200.

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
Substantive Changes-Reopen Registration Period and Late Registrations						
§ 206.112(c)	Adds that when the President's declaration is amended to include additional counties after the registration period for the major disaster or emergency has expired, FEMA may reopen the registration period for the additional counties for 60 days	Once[397]	D	Increases applicant costs by $830 per year and increases FEMA costs by $991 per year.	Provides more flexibility to collect disaster assistance registrations.	Increases transfers from FEMA to applicants by $218,880 annually.
§ 206.112(d)	Revises *Late registrations* to replace "provide suitable documentation to support and justify" with "explain" the reason for the delay in their registration	No	D	Reduces applicant burden costs by $207,727 per year and reduces FEMA burden costs by $173,928 annually.	Provides a lower burden option for late registration eligibility and helps streamline assistance.	None.
Substantive Changes-Severability						
§ 206.110(n) § 206.191(g)	Adds a new *Severability* paragraph stating any provision held to be invalid or unenforceable as applied to any person or circumstance should be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons	No	D	None.	Provides flexibility for those provisions that are unaffected by a legal ruling can be	None.

[397] DR-4473-PR; Rincon.

44 CFR[384]	Change	Implemented	Action Type[385]	Impact[386] on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
	not similarly situated or to dissimilar circumstances, unless such holding is that the provision is invalid and unenforceable in all circumstances, in which event the provision should be severable from the remainder and should not affect the remainder thereof[398].				implemented by an agency without requiring a new round of rulemaking simply to promulgate provisions that are not subject to a court ruling.	

[398] Section 206.110(n) references the provision of this subpart. Section 206.191(g) references the provision of this section.

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C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), and section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, 110 Stat. 847, 858–59 (Mar. 29, 1996) (5 U.S.C. 601 note) require that special consideration be given to the effects of regulations on small entities. When an agency is required to publish a general NPRM, it must prepare a regulatory flexibility analysis describing the impact of the rule on small entities.[399] FEMA is not required, by the Administrative Procedure Act (APA) or any other law, to publish a general NPRM for this rule. Therefore, FEMA is not required to prepare a regulatory flexibility analysis for this rule.

As is discussed above, the APA generally requires agencies to publish an NPRM, but it provides an exception for matters relating to public property, loans, grants, benefits, or contracts.[400] This rule amends FEMA's regulations related to grant funding FEMA provides under the IHP. As such, it is exempt from the APA's notice and comment requirements and therefore from the RFA's requirements. Until recently, FEMA waived the exemption afforded to grant programs under the APA and treated its programs as if they were subject to traditional notice and comment requirements. On March 3, 2022, FEMA published the ''Regulations on Rulemaking Procedures Final Rule'' clarifying its position regarding notice and comment rulemaking for its grant programs.[401] FEMA determined that removal of the waiver of the exemption streamlined the regulations and ensured that the agency retained the flexibility to utilize a range of public engagement options in advance of rulemaking where appropriate. FEMA noted that it would retain its general policy in favor of public participation in rulemaking but would retain discretion to depart from this policy as circumstances warrant.

This rulemaking is related to financial assistance and direct services FEMA provides to individuals and households who, as a direct result of a major disaster, have necessary expenses and serious needs in cases in which the individuals and households are unable to meet such expenses or needs through other means. 42 U.S.C. 5174. The only part of the rulemaking which might affect small entities are the changes to 44 CFR 206.113(b)(9) where FEMA is allowing self-employed individuals to receive personal property assistance for essential tools damaged in the disaster. That means this rulemaking will not have a significant impact on small entities as it will only impact those self-employed individuals who choose to apply for personal property assistance, in their individual capacity, not as a self-employed business.[402] Self-employed individuals who feel that the information collection requirements are too onerous do not have to apply for assistance as this is a voluntary grant program. Based on these circumstances, FEMA is not preparing a regulatory flexibility analysis because this rule is unlikely to have a significant impact on small entities.

D. Unfunded Mandates Reform Act

Pursuant to section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that before promulgating any general NPRM that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year, and before promulgating any final rule for which a general NPRM was published, the agency shall prepare a written statement detailing the effect on State, local, and Tribal governments and the private sector. This is a final rule for which a general NPRM was not published, and thus preparation of such a statement is not required.

E. National Environmental Policy Act of 1969 (NEPA)

Section 102 of the National Environmental Policy Act of 1969 (NEPA), 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*) requires Federal agencies to consider the environmental impacts of any major Federal action they propose that may significantly affect the quality of the human environment, to consider alternatives to that action, and mitigate any potential adverse effects. The Council on Environmental Quality's (CEQ) regulations for implementing NEPA, 40 CFR parts 1500 through 1508, require each Federal agency to determine whether the proposed activity is a ''major Federal action'' and the appropriate level of NEPA review, that is, whether the action requires preparation of an environmental assessment (EA) or environmental impact statement (EIS), or if a categorical exclusion applies. 40 CFR 1501.3. Major Federal actions include promulgation of new or revised agency rules. 40 CFR 1508.1(q)(2).

For efficiency, Federal agencies identify in their NEPA implementing procedures categories of actions (categorical exclusions (CATEXs)) that normally do not have a significant effect on the human environment individually or cumulatively. 40 CFR 1501.4. If a CATEX applies then the, preparation of an EA or environmental impact statement EIS is not required. However, the Federal agency must determine if there are extraordinary circumstances which may result in the action having a significant impact. If the agency can lessen the significance of the impact, the agency may still apply the CATEX. However, if there is a significant impact, the CATEX does not apply, and further environmental review is required. 40 CFR 1501.4. If an action does not qualify for a CATEX and has the potential to significantly effect the environment, the agency must prepare an EA to evaluate the environmental impact of the action. The EA will determine whether the agency may issue a finding of no significant impact or must prepare an EIS. A Federal agency is required to prepare an EIS if the proposed action will have significant effects on the quality of the human environment. 40 CFR 1501.3, 1502.3.

DHS has established categorical exclusions for categories of actions that experience has shown do not individually or cumulatively have a significant effect on the human environment. The DHS categorical exclusions are listed in Appendix A of DHS Instruction Manual 023–01–001–01, *Implementing the National Environmental Policy Act* (Instruction Manual). The Instruction Manual and associated DHS Directive 023–01, *Implementing the National Environmental Policy Act,* establish the policies and procedures DHS and its component agencies use to comply with NEPA and CEQ's NEPA regulations. Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece

[399] See 5 U.S.C. 603–604.

[400] 5 U.S.C. 553(a)(2), (b) and (c).

[401] See 87 FR 11971, Mar. 3, 2022.

[402] Businesses will continue to be ineligible under 44 CFR 206.113(b)(9).

of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.

The majority of the revisions in this rulemaking apply to the regulations for the Individuals and Households Program, which is a voluntary grant program that provides financial assistance and direct services to eligible individuals and households who have uninsured or underinsured necessary expenses and serious needs as a result of a Presidentially-declared disaster. FEMA publishes this IFR to amend its regulations governing the Individual Assistance program to increase equity by simplifying processes, removing barriers to entry, and increasing eligibility for certain types of assistance under the program. Specifically, the IFR increases eligibility for home repair assistance by amending the definitions and application of the terms safe, sanitary, and functional, allowing assistance for certain accessibility-related items, and amending its approach to evaluating insurance proceeds; allows for the re-opening of the applicant registration period when the President adds new counties to the major disaster declaration; simplifies the documentation requirements for continued temporary housing assistance; simplifies the appeals process; simplifies the process to request approval for a late registration; removes the requirement to apply for a Small Business Administration loan as a condition of eligibility for ONA; and establishes additional eligible assistance under ONA for serious needs, displacement, disaster-damaged computing devices and essential tools for self-employed individuals. FEMA also makes revisions to reflect changes to statutory authority that have not yet been implemented in regulation, to include provisions for utility and security deposit payments, lease and repair of multifamily rental housing, child care assistance, maximum assistance limits, and waiver authority. This action is not a piece of a larger action, but rather amends subpart D, E, and F of 44 CFR part 206 [403] as a standalone action.

These changes implement existing statutory requirements and amend existing regulations. FEMA is not aware of any significant impact on the environment or any change in environmental effect that will result from these changes. Accordingly, FEMA finds promulgation of this rule clearly fits within the scope of Categorical Exclusion A(3) in Appendix A of the Instruction Manual, which provides a categorical exclusion for promulgation of certain types of rules, including rules that interpret or amend an existing regulation without changing its environmental effect (Categorical Exclusion A3(d)).

In accordance with DHS NEPA implementing procedures, FEMA finds no extraordinary circumstances associated with this rulemaking that may give rise to significant environmental effects requiring further analysis and documentation. This rule addresses specific amendments to subpart D, E, and F of 44 CFR part 206 and is not part of a larger action by FEMA. This action is therefore categorically excluded, and no further NEPA analysis or documentation is required.

F. Paperwork Reduction Act of 1995

This rule contains information collection revisions necessary to support FEMA's implementation of the Individual Assistance Program Equity Interim Final Rule. The Individual Assistance Registration and Individuals and Households Program collections are assigned OMB Control Numbers 1660–0002 and 1660–0061. The collections are submitted under OMB's emergency clearance procedures to allow implementation as of the effective date of this interim final rule. Additionally, FEMA will seek public comments on both collections through the normal clearance process.

G. Privacy Act/E-Government Act of 2002

Under the Privacy Act, 5 U.S.C. 552a, an agency must determine whether implementation of a proposed regulation will result in a system of records. A ''record'' is any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his/her education, financial transactions, medical history, and criminal or employment history and that contains his/her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. See 5 U.S.C. 552a(a)(4). A ''system of records'' is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. An agency cannot disclose any record which is contained in a system of records without written consent from the file subject, or an applicable Privacy Act exception. 5 U.S.C. 552a(b).

The E-Government Act of 2002, 44 U.S.C. 3501 note, also requires specific procedures when an agency takes action to develop or procure information technology that collects, maintains, or disseminates information that is in an identifiable form. This Act also applies when an agency initiates a new collection of information that will be collected, maintained, or disseminated using information technology if it includes any information in an identifiable form permitting the physical or online contacting of a specific individual.

To meet the requirements of the Privacy Act and E-Government Act of 2002, the agency performed a Privacy Threshold Analysis, which is an initial determination of whether the regulation triggers the requirements of either of those Acts. The system is covered by the existing Privacy Impact Assessments (PIAs): DHS/FEMA/PIA–049 Individual Assistance (IA) Program and DHS/FEMA/PIA–057 Individuals and Households Program Equity Analysis. The system is also covered by an existing System of Records Notice: DHS/FEMA–008 Disaster Recovery Assistance Files.

H. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, ''Consultation and Coordination With Indian Tribal Governments,'' 65 FR 67249, Nov. 9, 2000 applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Under this Executive order, to the extent practicable and permitted by law, no agency will promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal Government, or the agency consults with Tribal officials.

The majority of the revisions in this rulemaking apply to the regulations for the IHP, which is a voluntary grant program that provides financial assistance and direct services to eligible

[403] This IFR revises Subpart D—Federal Assistance to Individuals and Households, removes and reserves Subpart E—Individual and Family Grant Programs, and revises only § 206.191 of Subpart F—Other Individual Assistance.

individuals and households who have uninsured or underinsured necessary expenses and serious needs as a result of a Presidentially-declared disaster. FEMA publishes this IFR amending its regulations governing the Individual Assistance program to increase equity by simplifying processes, removing barriers to entry, and increasing eligibility for certain types of assistance under the program. Specifically, the IFR increases eligibility for home repair assistance by amending the definitions and application of the terms safe, sanitary, and functional, allowing assistance for certain accessibility-related items, and amending its approach to evaluating insurance proceeds; allows for the re-opening of the applicant registration period when the President adds new counties to the major disaster declaration; simplifies the documentation requirements for continued temporary housing assistance; simplifies the appeals process; simplifies the process to request approval for a late registration; removes the requirement to apply for a Small Business Administration loan as a condition of eligibility for ONA; and establishes additional eligible assistance under ONA for serious needs, displacement, disaster-damaged computing devices and essential tools for self-employed individuals. FEMA also makes revisions to reflect changes to statutory authority that have not yet been implemented in regulation, to include provisions for utility and security deposit payments, lease and repair of multifamily rental housing, child care assistance, maximum assistance limits, and waiver authority. Under the IFR, Indian Tribal members would have the same opportunity to participate in the IHP, as other eligible applicants. As a result, FEMA does not expect this IFR to have a substantial direct effect on one or more Indian Tribal Governments or impose direct compliance costs on Indian Tribal Governments. FEMA does not expect the regulations to have substantial direct effects on the relationship between the Federal Government and Indian Tribal Governments or on the distribution of power and responsibilities between the Federal Government and Indian Tribal Governments.

In its request for information,[404] FEMA received four comments from Indian Tribal Governments or members of Indian Tribal Governments that were relevant to this rule.[405]

Subsistence Practices

All four of the comments addressed the same general issue: the eligibility of subsistence cabins and equipment under IHP.[406] The commenters detailed how the subsistence cabins and fish drying equipment in an Alaska Native community were damaged by flooding, but the Alaska Department of Homeland Security and Emergency Management did not provide assistance for these damages because it determined that Federal regulations limited eligibility for IHP ONA to property in or near a person's home. One commenter stated that the State's ONA State Specific Items list, which they obtained through a public records request, includes certain types of subsistence equipment that are eligible, but only if the items are stored at a person's home at the time of the disaster.[407] This commenter explained that the subsistence cabins and equipment should be and are eligible for assistance, regardless of location, and stated FEMA must amend its regulations to clarify this eligibility. Another commenter requested FEMA mandate the State of Alaska provide assistance for the repair and replacement of the subsistence cabins and fish drying equipment, even outside the community that they reside.[408]

There are a number of different factors that can impact eligibility under IHP ONA and a close review of the specific circumstances for these subsistence cabins and equipment would be needed to determine whether they are in fact eligible. Even if a given item is eligible, however, the applicable STT government for the declaration must identify all the ONA-eligible personal property and miscellaneous items it wishes to cover, as well as the maximum number of items each individual or household may receive.[409]

Per current regulations, 44 CFR 206.113(b)(9), FEMA may not provide IHP assistance for business losses, including farm businesses and self-employment. Under current policy, self-employed individuals are eligible for FEMA assistance for their personal losses, but not for necessary expenses and serious needs related to business losses.

As part of this IFR and in response to comments received on the agency's RFI, FEMA amends its regulations to allow FEMA to provide self-employed applicants with IHP financial assistance for necessary expenses and serious needs for occupational tools. Assistance would be based on a need to replace certain disaster-damaged items required for self-employment. This would include disaster-damaged tools and equipment, or other items required for a specific trade or profession, not provided or supplied by the employer. Depending on the item requested by the applicant and its purpose, subsistence items may be eligible for assistance under this authority.

I. Executive Order 13132, Federalism

A rule has implications for federalism under Executive Order 13132 ''Federalism'' (64 FR 43255, Aug. 10, 1999), if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. FEMA has analyzed this rule under Executive Order 13132 and determined that it does not have implications for federalism.

J. Executive Order 12630, Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, ''Governmental Actions and Interference With Constitutionally Protected Property Rights'' (53 FR 8859, Mar. 18, 1988).

K. Executive Order 12898, Environmental Justice and Executive Order 14096, Revitalizing Our Nation's Commitment to Environmental Justice for All

Executive Order 12898 ''Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, Feb. 16, 1994), as amended by Executive Order 12948 (60 FR 6381, Feb. 1, 1995) mandates that Federal agencies identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations. It requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in, denying persons the benefit of, or subjecting persons to discrimination

[404] 86 FR 21325, Apr. 22, 2021.

[405] There were other general Tribal comments received on the request for information, but they are outside the scope of this rule and are not discussed here.

[406] FEMA–2021–0011–0176 (pages 19–20, 27–28, representing two separate commenters), FEMA–2021–0011–0246, and FEMA–2021–0011–0283.

[407] FEMA–2021–0011–0246.

[408] FEMA–2021–0011–0283.

[409] See page 149 of IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf*.

because of their race, color, or national origin or income level.

The supplemental definition of ''Environmental Justice'' in sec. 2.(b)(ii) of Executive Order 14096 ''Revitalizing Our Nation's Commitment to Environmental Justice for All'' (88 FR 25251, April 26, 2023) includes the just treatment and meaningful involvement of all people such that they have equitable access to subsistence practices and the Section 1 policy statement says that the Federal Government must recognize, honor and respect the different cultural practices—including subsistence practices, ways of living, Indigenous Knowledge, and traditions—in communities across America.

The majority of the revisions in this rulemaking apply to the regulations for the IHP, which is a voluntary grant program that provides financial assistance and direct services to eligible individuals and households who have uninsured or underinsured necessary expenses and serious needs as a result of a Presidentially-declared disaster FEMA publishes this IFR amending its regulations governing the Individual Assistance program to increase equity by simplifying processes, removing barriers to entry, and increasing eligibility for certain types of assistance under the program. Specifically, the IFR increases eligibility for home repair assistance by amending the definitions and application of the terms safe, sanitary, and functional, allowing assistance for certain accessibility-related items, and amending its approach to evaluating insurance proceeds; allows for the re-opening of the applicant registration period when the President adds new counties to the major disaster declaration; simplifies the documentation requirements for continued temporary housing assistance; simplifies the appeals process; simplifies the process to request approval for a late registration; removes the requirement to apply for a Small Business Administration loan as a condition of eligibility for ONA; and establishes additional eligible assistance under ONA for serious needs, displacement, disaster-damaged computing devices and essential tools for self-employed individuals. FEMA also makes revisions to reflect changes to statutory authority that have not yet been implemented in regulation, to include provisions for utility and security deposit payments, lease and repair of multifamily rental housing, child care assistance, maximum assistance limits, and waiver authority. There are no adverse effects and no disproportionate effects on minority populations and low-income populations.

On April 22, 2021, FEMA published an RFI on FEMA Programs, Regulations, and Policies.[410] FEMA sought public input on its programs, regulations, collections of information, and policies for the agency to ensure that its programs, regulations, and policies contain necessary, properly tailored, and up-to-date requirements that effectively achieve FEMA's mission in a manner that furthers the goals of advancing equity for all, including those in underserved communities; bolstering resilience from the impacts of climate change, particularly for those disproportionately impacted by climate change; and environmental justice.

FEMA held public meetings and extended the comment period on the RFI to ensure all interested parties had sufficient opportunity to provide comments on FEMA's programs.[411] All relevant comments received in response to the request for information, including those received during the public meetings, have been posted to the public rulemaking docket on the Federal eRulemaking portal at *https://www.regulations.gov/document/FEMA-2021-0011-0001/comment.*

In response to its RFI, FEMA received five comments on environmental justice related to this rule.[412] One commenter stated that people with disabilities or who live in persistent poverty may often have homes that do not meet FEMA's ''safe and habitable'' standard and that FEMA's limitations on housing recovery efforts beyond a pre-disaster state leaves these people only with housing options that are even more susceptible to negative environmental impact.[413] Additionally, the commenter stated that because the Individual Assistance program does not cover accessibility-related items for pre-existing or disaster acquired disabilities, many disabled people must choose between accessible housing structures or communities that afford more environmental justice opportunities. The commenter stated that this increases inequity and environmental injustice for disabled persons and that accounting for these environmental needs and covering these expenses would promote environmental justice.

FEMA recognizes that current regulations limit assistance to applicants with residences that incurred disaster-caused damage; therefore, the regulations, as written, do not allow FEMA to address applicants' immediate safety and sanitation concerns and prevent FEMA from addressing or assessing the general livability issues with the applicant's residence when determining Housing Assistance eligibility. As part of this rule, FEMA broadens the definition of uninhabitable to encompass any damage to the applicant's disaster damaged primary residence that causes the home to be unsuitable for occupancy or any disaster damage, that if left unrepaired, would impact habitability in the future. FEMA redefines ''uninhabitable'' to mean the dwelling is not safe or sanitary. ''Safe'' will refer to being secure from hazards or threats to occupants, and ''sanitary'' will refer to being free of health hazards. FEMA also removes the requirement for disaster-damaged real property components to be functional immediately before the disaster in order to provide assistance for pre-existing damage exacerbated by the disaster. Applicants with minimal damage, including those without the means to pay for minimal damage or who are unable to complete the work themselves, would generally be eligible for Home Repair Assistance under the regulations.

In response to public requests for IHP policy that meets applicants' disaster-caused structural home modification needs, FEMA recently amended its Home Repair Assistance policy to include *Assistance for Disaster-Caused Americans with Disabilities Act (ADA*) *Real Property Needs.* The September 2, 2021, *Amendment to FEMA Policy (FP) 104–009–03, Individual Assistance Program and Policy Guide (IAPPG), Version 1.1* memorandum currently states that FEMA may provide financial assistance to applicants who incur a disaster-caused disability and consequently require the installation or construction of accessibility-related real property components at their damaged dwelling to meet their needs. Home Repair Assistance for specific accessibility-related items is not limited by a financial maximum award. The following accessibility-related items are eligible under Home Repair Assistance when the applicant or a member of the household has a disaster-caused disability:

- Exterior ramp.
- Grab bars.

[410] 86 FR 21325, Apr. 22, 2021.

[411] See ''Request for Information on FEMA Programs, Regulations, and Policies; Public Meetings; Extension of Comment Period,'' 86 FR 30326, June 7, 2021.

[412] There were more comments that raised environmental justice issues generally, but they are outside the scope of this rule and are not discussed here.

[413] FEMA–2021–0011–0164.

• Paved path of travel to the primary residential entrance (for accessible ingress or egress from the applicant's vehicle to their dwelling).

In response to public comments, FEMA has also changes to the regulatory text at 44 CFR 206.117(b)(2) and a new 44 CFR 206.113(a)(9) as a part of this IFR. The changes will allow FEMA flexibility to provide financial assistance to applicants for the installation or construction of real property items that were not present in the home prior to the disaster. Specifically, these changes would allow IHP to expand its existing policy, which provides for the installation of ADA related real property to applicants with disaster-caused needs, to include Home Repair Assistance for disaster survivors with pre-existing, pre-disaster needs for accessibility-related items, such as an exterior ramp, grab bars, etc., that make their home safe and functional when any level of disaster-caused real property damage occurs to the primary residence.

One commenter recommended programmatic changes they stated would promote environmental justice.[414] First, the commenter suggested FEMA automatically deem applicants eligible for disaster assistance if they are already eligible for or enrolled in other Government aid programs, such as Medicaid, Supplemental Security Income, or Temporary Assistance for Needy Families.

Different Federal aid programs have different statutory requirements for eligibility and an applicant who qualifies for one may not necessarily qualify for another. The eligibility standards for FEMA's IA Program are not the same as those for the other Federal programs the commenter listed, and FEMA is not able to change statutory requirements via regulation.

The commenter further suggested a way to streamline policies to promote environmental justice is to connect agency databases. This way, Federal Government agencies already working with individuals from environmental justice communities, can share information about those in need at the time the individual makes an application for disaster relief.[415] The commenter stated this may shorten application processing times.

FEMA recognizes that data sharing might make it easier to access information about disaster survivors. However, collecting, maintaining, and sharing data on a large scale presents challenges with respect to data security. The Stafford Act and other authorities allow FEMA to collect personal information to determine eligibility and administer FEMA disaster assistance as a result of an Emergency or a Presidentially-declared disaster. FEMA cannot use other agencies' data for purposes not specifically authorized by statute.

The same commenter stated that to further promote equity, resilience to climate change, and environmental justice, FEMA should reduce its focus and the resources it commits to preventing fraud and duplication of benefits.[416]

Section 312(a) of the Stafford Act, 42 U.S.C. 5155(a), requires all Federal agencies to prevent recipients of disaster assistance from receiving such assistance for losses as to which the recipient has received financial assistance under any other program or from insurance or any other source. In short, 42 U.S.C. 5155(a) prohibits the use of Federal disaster assistance to pay a person or entity twice for the same disaster loss. In addition, per Section 408(i) of the Stafford Act, 42 U.S.C. 5174, FEMA must develop a system, including an electronic database, that minimizes the risk of making duplicative payments or payments for fraudulent claims under this section. FEMA must ensure good stewardship of taxpayers' funds and avoid both fraud and duplication of benefits as mandated by law. Section 696 of PKEMRA, 6 U.S.C. 795, also requires FEMA to develop and maintain proper internal management controls to prevent and detect fraud, waste, and abuse.

While FEMA continues to ensure we remain good stewards of taxpayers' funds, based on the comments received via the RFI, FEMA updated its policy to provide more documentation flexibilities in order to verify occupancy. Specifically, as outlined in the *Amendment to FEMA Policy (FP) 104–009–03, Individual Assistance Program and Policy Guide (IAPPG), Version 1.1* memorandum, dated September 2, 2021, FEMA will now accept social service organization documents, local school documents, Federal or State benefit documents, motor vehicle registration, affidavits of residency or court documentation, and mobile home park documents (*i.e.,* a letter or other written statement from the park owner or manager which states that the applicant or co-applicant occupied the disaster-damaged dwelling at the time of the disaster) in addition to the documentation options listed in IAPPG 1.1 to verify occupancy. Furthermore, as an option of last resort, FEMA may accept a written self-declarative statement from applicants whose pre-disaster residence was a mobile home or travel trailer or from applicants living in insular areas, islands, and Tribal lands.

Like occupancy, when FEMA is unable to verify an applicant's ownership of their primary residence, the applicant may provide FEMA with documentation to prove ownership. Based on comments submitted via the RFI, FEMA also updated its policy to provide more documentation flexibilities in order to verify ownership. Specifically, as outlined in the *Amendment to FEMA Policy (FP) 104–009–03, Individual Assistance Program and Policy Guide (IAPPG), Version 1.1* memorandum, date September 2, 2021, FEMA will now accept a mobile home park letter from the park owner or manager which states that the applicant or co-applicant owned the disaster-damaged dwelling at the time of the disaster, court documents, and a public official's letter in addition to the documentation options listed in IAPPG 1.1 to verify ownership. Furthermore, as an option of last resort, FEMA may accept a written self-declarative statement from applicants whose pre-disaster residence was a mobile home or travel trailer, from applicants living in insular areas, islands, and Tribal lands, and from applicants whose pre-disaster residence was passed down via heirship.

The commenter also stated that FEMA's determination letters sent to IA applicants are not effective at achieving the objective of assisting those most at need within environmental justice communities because they fail to provide useful or understandable information about the types of assistance provided or denied and the reasons for denial.[417] The commenter recommended a number of changes to the letters to address these issues, including using plain, simple, natural language and providing more information about why the applicant has been approved or denied and how to address denials.

FEMA continually updates and assesses the clarity and effectiveness of our IHP eligibility letters. FEMA's letters do not rely solely on codes and provide plain language descriptions of reasons for ineligibility and how to appeal. FEMA's regulations, at 44 CFR 206.115(b), require that appeals must be in writing and explain the reason(s) for the appeal. In this rule, FEMA is

[414] FEMA–2021–0011–0245.

[415] FEMA–2021–0011–0245.

[416] FEMA–2021–0011–0245.

[417] FEMA–2021–0011–0245.

removing the requirement that applicants submit a signed appeal letter explaining the reason for the appeal when they have provided sufficient substantiation through other documents. This will streamline the appeal process and reduce the complexity for applicants, which will speed up assistance to applicants and remove bureaucratic hurdles in the applicant's recovery process. To further assist applicants with navigating the appeals process, FEMA has created an optional appeal form that applicants could use when submitting appeals.

The commenter stated that internet access is an environmental justice concern and that members of underserved communities, including people of color, and the elderly tend to lack reliable access to the internet and FEMA's online portal.[418] The commenter further stated that, at least in some cases, requiring disaster survivors submit forms via the internet creates an unnecessary barrier to receiving aid.

While FEMA does encourage applicants to apply online when possible, we appreciate that not all applicants will have reliable internet access, especially right after a disaster. There are other options besides the internet for applying for IHP assistance, and if an applicant prefers not using the internet or does not have reliable access to the internet, they may apply over the telephone or in-person, instead.[419] Applicants may also submit documentation to FEMA through a variety of methods to include postal mail, fax, and by visiting DRCs that may be available in the impacted area following the disaster.

This commenter also stated that immigrant households and those with undocumented individuals face a number of environmental justice issues, that the FEMA application asks for information on all members of a household, not just the eligible members, and that the FEMA application and other forms indicate that information provided regarding an application for assistance may be shared with other DHS components, including U.S. Immigration and Customs Enforcement.[420] The commenter recommended FEMA repeal this policy of forwarding citizenship status to other agencies, and update its forms to reflect such a change, because it has a chilling effect on applications from these households, even when some members of the household are eligible for assistance.

While the Privacy Act requires FEMA to make applicants aware of this information, we have updated this data sharing language in the past several years to remove references to U.S. Immigration and Customs Enforcement and clarify the reasons FEMA would share information. The current version informs applicants that, consistent with the Privacy Act, as amended, 5 U.S.C. 552a, FEMA may share individuals' information with Federal, State, Tribal, and local agencies and voluntary organizations to enable individuals to receive additional disaster assistance or to allow FEMA to administer assistance.[421]

One commenter stated that the focus of many FEMA programs on replacing what was lost in a disaster propagates environmental injustices and inequity for marginalized communities.[422] The commenter further stated that numerous studies have shown that some neighborhoods today are still influenced by redlining that occurred decades ago. The commenter recommended FEMA adopt a build-forward approach that leverages the recovery process to implement community-based plans to address inequities.

FEMA may provide financial assistance to repair an owner-occupied primary residence, utilities, and residential infrastructure, including private access routes damaged as a result of a Presidentially-declared disaster. Home Repair Assistance is intended to make the damaged home safe, sanitary, or functional.[423] It is not intended to return the home to its pre-disaster condition. Rather, currently, Home Repair Assistance award amounts are based on repair or replacement of components that are of average quality, size, or capacity and provided to eligible applicants who meet all requirements.

In this rule, FEMA removes the requirement for real property components to be functional immediately before the disaster to provide assistance for pre-existing damage. Under this IFR, when a component of the home with pre-existing damage is further damaged by the disaster, FEMA will provide assistance to fully repair or replace the item (as appropriate) rather than denying assistance solely because not all damage was caused by the disaster.

One commenter stated FEMA should prioritize comprehensive data collection and analysis to achieve the agency's equity and environmental justice goals, and noted this may require collecting more specific data than FEMA has collected before.[424] The commenter said FEMA must conduct rigorous and regular analyses of the distribution of its aid with regards to applicants' race and ethnicity, income level and wealth, educational attainment, gender, disability status, age, and other factors that may help indicate an applicant's relationships to underserved communities.

In August of 2022, FEMA began gathering demographic information from disaster survivors that choose to provide it. This data will be used to assess the impact of IA Programs and policies on underserved populations using FEMA's existing analysis processes. Although some data and information will be provided for background or situational awareness, the objective will be to affect positive changes by conducting analysis of the collected data to better understand program outcomes accordingly based on factors such as race, ethnicity, and income and updating policies and programs within our regulatory and statutory parameters to achieve greater equity.

This commenter also stated that FEMA could extend the process of self-certifying homeownership to members of underserved, historically marginalized, and environmental justice communities nationwide.[425] The commenter stated this change could help decrease the barriers for ''low-wealth'' and ''people of color households'' to receiving Federal aid and assistance.

Per IAPPG 1.1, FEMA verifies occupancy through an automated public records search or submitted documents. In locations where automated verification of public records is limited, FEMA may partner with applicable authorities from the State, local, Tribal, or Territorial government to verify ownership or occupancy. When FEMA is unable to verify an applicant's occupancy of their disaster-damaged primary residence, the applicant may provide FEMA with documentation for

[418] FEMA–2021–0011–0245.

[419] For more information on ways to apply, see FEMA's IHP web page, *https://www.fema.gov/assistance/individual/program#apply.* Additionally, FEMA does extensive outreach at disaster sites which would include members of underserved communities, including people of color and the elderly. FEMA's robust messaging of how to apply for FEMA assistance includes applying by telephone, using internet access, or by going to a DRC.

[420] FEMA–2021–0011–0245.

[421] See ICR Reference No. 202201–1660–005, FF–104–FY–21–122 (formerly 009–0–1) View Information Collection Request (ICR) Package (*reginfo.gov*).

[422] FEMA–2021–0011–0261. See ICR Reference No. 202201–1660–005, FF–104–FY–21–122 (formerly 009–0–1) View Information Collection Request (ICR) Package (*reginfo.gov*).

[423] See 42 U.S.C. 5174(c)(2)(A)(i).

[424] FEMA–2021–0011–0265.

[425] FEMA–2021–0011–0265.

verification. Based on comments submitted via the RFI, FEMA updated its policy to provide more documentation flexibilities in order to verify occupancy. Specifically, as outlined in the *Amendment to FEMA Policy (FP) 104–009–03, Individual Assistance Program and Policy Guide (IAPPG), Version 1.1* memorandum, dated September 2, 2021, FEMA will now accept social service organization documents, local school documents, Federal or State benefit documents, motor vehicle registration, affidavits of residency or court documentation, and mobile home park documents (*i.e.,* a letter or other written statement from the park owner or manager which states that the applicant or co-applicant occupied the disaster-damaged dwelling at the time of the disaster) in addition to the documentation options listed in the IAPPG 1.1 to verify occupancy. Furthermore, as an option of last resort, FEMA may accept a written self-declarative statement from applicants whose pre-disaster residence was a mobile home or travel trailer or from applicants living in insular areas, islands, and Tribal lands.

Like occupancy, when FEMA is unable to verify an applicant's ownership of their primary residence, the applicant may provide FEMA with documentation to prove ownership. Based on comments submitted via the RFI, FEMA also updated its policy to provide more documentation flexibilities in order to verify ownership. Specifically, as outlined in the *Amendment to FEMA Policy (FP) 104–009–03, Individual Assistance Program and Policy Guide (IAPPG), Version 1.1* memorandum, dated September 2, 2021, FEMA will now accept receipts for major repairs or improvements, mobile home park letters from the park owner or manager which states that the applicant or co-applicant owned the disaster-damaged dwelling at the time of the disaster, court documents, and a public official's letter in addition to the documentation options listed in IAPPG 1.1 to verify ownership. Furthermore, as an option of last resort, FEMA may accept a written self-declarative statement from applicants whose pre-disaster residence was a mobile home or travel trailer, from applicants living in insular areas, islands, and Tribal lands, and from applicants whose pre-disaster residence was passed down via heirship.

One commenter stated that FEMA's policies forcing disaster survivors to rebuild their homes in hazardous and racially segregated and environmentally blighted areas fails to promote environmental justice.[426] The commenter stated that FEMA fails to affirmatively further fair housing or to make housing options available outside of racially segregated areas to persons receiving IA and that there are many cases in which FEMA has effectively locked people into rebuilding in hazardous areas. The commenter noted that IA funding is specifically tied to rehabilitation of the residence affected by the disaster and argued that instead of spending this funding on repairs to a home in an area that is substandard for safe and sanitary housing, it could be utilized to move the affected household out of the hazardous area.

Per Section 408 of the Stafford Act, 42 U.S.C. 5174, FEMA may provide financial assistance to repair or replace an owner-occupied primary residence damaged as a result of a Presidentially-declared disaster. An applicant who receives Home Repair or Home Replacement Assistance may use the funds to either repair their disaster damaged dwelling or for the purchase of a home in a different location.[427] Similarly, applicants who receive Rental Assistance may choose to use that assistance in any location in the United States.[428] FEMA may also provide reimbursement of moving and storage expenses to eligible applicants who must relocate from their damaged home.

FEMA recognizes that helping disaster survivors address hazard mitigation measures while repairing their homes from disaster damage will help make their homes more resilient. FEMA began including additional assistance for mitigation in Home Repair Assistance awards for disasters declared on or after May 26, 2021. Section 408(c)(2)(A)(ii) of the Stafford Act, 42 U.S.C. 5174(c)(2)(A)(ii), authorizes FEMA to provide IHP assistance for eligible hazard mitigation measures that reduce the likelihood of future damage to such residences, utilities, or infrastructure, under the Home Repair Assistance provision. Hazard mitigation under IHP is awarded as part of Home Repair Assistance for specific real property components that existed and were functional prior to the disaster—roof, water heater, furnace, and main electrical panel. Hazard mitigation measures, such as elevating the water heater and furnace, are intended to minimize future damage to owner-occupied residences and are subject to the IHP maximum amount of Home Repair Assistance. FEMA plans to expand hazard mitigation under IHP in the future to include additional mitigation measures.

The same commenter stated that a number of other issues impact environmental justice. First, the commenter stated FEMA's assistance policy for the homeless population is discriminatory, noting that homeless people living in shelters or unsheltered on the street do not qualify for any housing assistance.[429] The commenter recommended FEMA coordinate with local organizations to provide shelter options post-disaster to the homeless population while encouraging permanent housing options.

FEMA's IHP assistance is intended to assist with disaster-caused losses. Therefore, issues related to pre-disaster homelessness are outside the scope of the program. As the commenter noted, applicants who resided in non-traditional housing (including tents) and are able to verify occupancy are eligible for certain types of housing assistance, in addition to ONA.[430] However, temporary congregate sheltering options are available to homeless applicants following a disaster regardless of their eligibility for IHP assistance.

Second, the commenter noted that the ''Needs Assessment'' is the first of many applications for recovery that applicants submit and that it provides crucial information that gives governments a realistic assessment of the amount of

[426] FEMA–2021–0011–0277.

[427] FEMA communicates the options via various means—whether through fact sheets, IAPPG 1.1, in person, or applicant received communication.

[428] Since August 2006, FEMA established its Rental Assistance Rate Increase Policy, which outlined the criteria and guidance for increasing the rate of Rental Assistance within a declared State following a presidential emergency or major disaster declaration. This policy is currently included at page 85 of the IAPPG 1.1. FEMA evaluates the need for a Rental Assistance rate increase by comparing U.S. Census Bureau American Community Survey statistics on housing inventory and vacancy rates to the best available data on disaster-caused housing impacts in declared disaster areas. The STT government may request a Rental Assistance rate increase by submitting other reliable sources of these data elements for FEMA to use. The FMR Calculator allows FEMA to rapidly evaluate the need for a Rental Assistance rate increase based on pre-disaster housing stock data, the amount of housing impacted by the disaster, and the post-disaster vacancy rate for each impacted county. FEMA may authorize Rental Assistance rate increases when the FMR Calculator demonstrates available housing for the area is insufficient to meet the disaster-caused housing need, or when elevated housing market rates adversely impact eligible applicants' ability to obtain rental resources. The RA or the FCO, if the RA has delegated authority to the FCO, may approve Rental Assistance rate increases for designated counties (or equivalent) when the FMR Calculator result indicates an increase above 100 percent. The increase may not exceed the amount indicated by the FMR Calculator, or 125 percent of the HUD FMR, whichever is lower.

[429] FEMA–2021–0011–0277.

[430] See page 62 of IAPPG 1.1. *https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.*

unmet need, but stated that it may be confusing for applicants that they also need to submit separate applications for FEMA and for HUD assistance.[431] The commenter recommended the ''Needs Assessment'' be used as a first point of entrance into the disaster recovery mechanism instead of waiting for applicants to apply for FEMA or CDBG–DR funds. The commenter further recommended that government agencies share this data so that disaster survivors do not get lost in the disaster recovery apparatus.

It is unclear to FEMA whether the ''Needs Assessment'' referenced by the commenter is a form submitted to a private organization or another Federal agency. If the commenter's reference is to a form submitted to a Federal agency, different Federal aid programs have different statutory requirements for eligibility and an applicant who qualifies for one may not necessarily qualify for another. The eligibility standards for FEMA's IA Program are not the same as those for HUD's CDBG–DR program, and FEMA is not able to change statutory requirements via regulation. If the ''Needs Assessment'' form is submitted to a private organization, it generally would not be a part of FEMA's operations.

With respect to data sharing, FEMA recognizes that data sharing might make it easier to access information about disaster survivors. However, collecting, maintaining, and sharing data on a large scale presents challenges with respect to data security. The Stafford Act and other authorities allow FEMA to collect personal information to determine eligibility and administer FEMA disaster assistance as a result of an Emergency or a Presidentially declared disaster. FEMA cannot use other agencies' data for unintended purposes.

Finally, the commenter noted that some types of disaster assistance are administered by FEMA and others by HUD and that FEMA has an obligation to not duplicate assistance with any other Federal program, but stated that this is an issue of income discrimination for low-income survivors and also a barrier to finding stable housing in a housing market devastated by a disaster.[432] The commenter stated that the lack of coordination between the various entities charged with administering recovery funds makes the overall recovery process more complicated, and recommended that FEMA take over temporary housing assistance entirely so disaster survivors may find housing not tied to HUD assistance while the area is still recovering. The commenter also recommended that FEMA allow its temporary housing funds to be used also as permanent repair dollars in a way that CDBG–DR funding can build on.

The commenter is correct that FEMA must not duplicate assistance provided by other Federal programs. With respect to taking over other assistance programs outside of the Stafford Act, doing so would require a change to the statutory provisions underlying those programs and FEMA cannot change statutory provisions via rulemaking. However, FEMA is committed to ongoing engagement and communication with our Federal partners to better address the needs of traditionally underserved communities and will continue looking for better ways to coordinate our program delivery. Additionally, FEMA already provides permanent repair dollars in addition to temporary housing funds to eligible homeowners.

As part of this IFR and in response to comments received on the agency's RFI, FEMA amends its regulations to allow FEMA to provide self-employed applicants with IHP financial assistance for necessary expenses and serious needs for occupational tools. Assistance will be based on a need to replace certain disaster-damaged items required for self-employment. This will include disaster-damaged tools and equipment, or other items required for a specific trade or profession, not provided or supplied by the employer. Depending on the item requested by the applicant and its purpose, subsistence items may be eligible for assistance under this authority. (See the *Subsistence Practices* discussion in the Executive Order 13175, Consultation and Coordination With Indian Tribal Governments regulatory statement.)

Other comments received on FEMA's RFI relating to public access to information, which may overlap with the Environmental Justice effects of this rule, are discussed above in the Equity RFI—IA Program Equity Responses to Comments section.

L. Executive Order 12988, Civil Justice Reform

This rule meets applicable standards in Sections 3(a) and 3(b)(2) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, Feb. 7, 1996), to minimize litigation, eliminate ambiguity, and reduce burden.

M. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

This rule will not create environmental health risks or safety risks for children under Executive Order 13045, ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, Apr. 23, 1997).

N. Executive Order 11988, Floodplain Management

Pursuant to Executive Order 11988, each Federal agency is required to provide leadership and take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. In carrying out these responsibilities, each agency must evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the policies and requirements of the Executive order, to the extent permitted by law.

Before promulgating any regulation, an agency must determine whether the regulation will affect a floodplain(s), and if so, the agency must consider alternatives to avoid adverse effects and incompatible development in the floodplain(s). Where possible, an agency shall use natural systems, ecosystem processes, and nature-based approaches when developing alternatives for consideration. If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in Executive Order 11988 is to promulgate a regulation that affects a floodplain(s), the agency must, prior to promulgating the regulation, design or modify the regulation in order to minimize potential harm to or within the floodplain, consistent with the agency's floodplain management regulations and prepare and circulate a notice containing an explanation of why the action is located in the floodplain.

The requirements of Executive Order 11988 apply in the context of the provision of Federal financial assistance relating to, among other things, construction and property improvement activities. However, this rule will not have an effect on floodplains. The purpose of the rule is to update FEMA's

[431] FEMA–2021–0011–0277.

[432] FEMA–2021–0011–0277.

IHP regulations to reflect statutory changes that have already been implemented. The majority of the revisions in this rulemaking apply to the regulations for the IHP, which is a voluntary grant program that provides financial assistance and direct services to eligible individuals and households who have uninsured or underinsured necessary expenses and serious needs as a result of a Presidentially-declared disaster. FEMA publishes this IFR amending its regulations governing the Individual Assistance program to increase equity by simplifying processes, removing barriers to entry, and increasing eligibility for certain types of assistance under the program. Specifically, the IFR increases eligibility for home repair assistance by amending the definitions and application of the terms safe, sanitary, and functional, allowing assistance for certain accessibility-related items, and amending its approach to evaluating insurance proceeds; allows for the re-opening of the applicant registration period when the President adds new counties to the major disaster declaration; simplifies the documentation requirements for continued temporary housing assistance; simplifies the appeals process; simplifies the process to request approval for a late registration; removes the requirement to apply for a Small Business Administration loan as a condition of eligibility for ONA; and establishes additional eligible assistance under ONA for serious needs, displacement, disaster-damaged computing devices and essential tools for self-employed individuals. FEMA also makes revisions to reflect changes to statutory authority that have not yet been implemented in regulation, to include provisions for utility and security deposit payments, lease and repair of multifamily rental housing, child care assistance, maximum assistance limits, and waiver authority.

O. Executive Order 11990, Protection of Wetlands

Pursuant to Executive Order 11990, each Federal agency must provide leadership and take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. Each agency, to the extent permitted by law, must avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding the head of the agency may take into account economic, environmental and other pertinent factors.

In carrying out the activities described in the Executive order, each agency must consider factors relevant to a proposal's effect on the survival and quality of the wetlands. Among these factors are: public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion; maintenance of natural systems, including conservation and long-term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

The requirements of Executive Order 11990 apply in the context of the provision of Federal financial assistance relating to, among other things, construction and property improvement activities. However, this rule will not have an effect on land use or wetlands. The purpose of the rule is to update FEMA's IHP regulations to reflect statutory changes that have already been implemented. The majority of the revisions in this rulemaking apply to the regulations for the IHP, which is a voluntary grant program that provides financial assistance and direct services to eligible individuals and households who have uninsured or underinsured necessary expenses and serious needs as a result of a Presidentially declared disaster. FEMA publishes this IFR amending its regulations governing the Individual Assistance program to increase equity by simplifying processes, removing barriers to entry, and increasing eligibility for certain types of assistance under the program. Specifically, the IFR increases eligibility for home repair assistance by amending the definitions and application of the terms safe, sanitary, and functional, allowing assistance for certain accessibility-related items, and amending its approach to evaluating insurance proceeds; allows for the re-opening of the applicant registration period when the President adds new counties to the major disaster declaration; simplifies the documentation requirements for continued temporary housing assistance; simplifies the appeals process; simplifies the process to request approval for a late registration; removes the requirement to apply for a Small Business Administration loan as a condition of eligibility for ONA; and establishes additional eligible assistance under ONA for serious needs, displacement, disaster-damaged computing devices and essential tools for self-employed individuals. FEMA also makes revisions to reflect changes to statutory authority that have not yet been implemented in regulation, to include provisions for utility and security deposit payments, lease and repair of multifamily rental housing, child care assistance, maximum assistance limits, and waiver authority.

P. National Historic Preservation Act

The National Historic Preservation Act (NHPA) (54 U.S.C. 300101, formerly 16 U.S.C. 470) was enacted in 1966, with various amendments throughout the years. Section 106 of the NHPA (54 U.S.C. 306108) requires Federal agencies to take into account the effect of a proposed Federal or Federally assisted undertaking on any historic property. Among other requirements, where there is the potential for the undertaking (or project) to affect historic properties, the NHPA mandates a consultation process in the early stages of project planning which must be completed prior to the approval of expenditure of the Federal funds. Subpart B of 36 CFR part 800 lays out a four-step Section 106 process to fulfill this obligation: (1) Initiate the process (800.3); (2) identify historic properties (800.4); (3) assess adverse effects (800.5); (4) resolve adverse effects (800.6). If, however, the agency determines that the undertaking is a type of activity that does not have the potential to cause effects on historic properties, assuming such historic properties were present, the agency has no further obligations under the NHPA. 36 CFR 800.3(a)(1). Based on over 20 years of practice, since section 206.110(m) was published, FEMA has determined that the proposed undertaking, excluding the stated exceptions, does not have the potential to cause effects on historic properties. Therefore, FEMA changes the language in section 206.110(m) to align it with the applicable statutory and regulatory language (*i.e.,* 36 CFR 800.3(a)(1)).

The purpose of the rule is to amend its IA regulations to increase equity and ease of entry to the IA Program and to update FEMA's IHP regulations to reflect statutory changes that have already been implemented. The majority of the revisions in this rulemaking apply to the regulations for the IHP, which is a voluntary grant program that provides financial assistance and direct services to eligible individuals and households who have uninsured or underinsured necessary expenses and serious needs as a result of a Presidentially-declared disaster. FEMA publishes this IFR amending its regulations governing the Individual Assistance program to increase equity by simplifying processes, removing barriers to entry, and increasing eligibility for certain types of assistance under the program. Specifically, the IFR increases eligibility for home repair assistance by amending the definitions and application of the terms safe, sanitary, and functional, allowing assistance for certain accessibility-related items, and amending its approach to evaluating insurance proceeds; allows for the re-opening of the applicant registration period when the President adds new counties to the major disaster declaration; simplifies the documentation requirements for continued temporary housing assistance; simplifies the appeals process; simplifies the process to request approval for a late registration; removes the requirement to apply for a Small Business Administration loan as a condition of eligibility for ONA; and establishes additional eligible assistance under ONA for serious needs, displacement, disaster-damaged computing devices and essential tools for self-employed individuals. FEMA also makes revisions to reflect changes to statutory authority that have not yet been implemented in regulation, to include provisions for utility and security deposit payments, lease and repair of multifamily rental housing, child care assistance, maximum assistance limits, and waiver authority.

Pursuant to Section 106 of the NHPA and its implementing regulations at 36 CFR part 800, FEMA has determined that this rule does not have the potential to cause effects to historic properties and in accordance with 36 CFR 800.3(a)(1), FEMA has no further obligations under Section 106.

Q. Endangered Species Act

The Endangered Species Act (ESA) mandates that Federal agencies determine whether their proposed actions may affect listed species and/or their designated critical habitat (critical habitat has been designated for some, but not all listed species). Without authorization or exemption from Federal resource agencies, it is unlawful for any person, whether government employee or private citizen, to take listed species.

To comply with Section 7(a)(2) of the ESA, 16 U.S.C. 1536, for every action that FEMA proposes to carry out, fund, or authorize, FEMA must first determine if listed species and habitat are present in the action area. If species are present in the action area, then FEMA must make one of the following determinations with respect to the effect of the proposed action on listed species and critical habitat: (1) No Effect (NE); (2) may affect, but is not likely to adversely affect (NLAA); or (3) may affect and is likely to adversely affect (LAA).

The purpose of the rule is to update FEMA's IHP regulations to reflect statutory changes that have already been implemented. The majority of the revisions in this rulemaking apply to the regulations for the IHP, which is a voluntary grant program that provides financial assistance and direct services to eligible individuals and households who have uninsured or underinsured necessary expenses and serious needs as a result of a Presidentially declared disaster. FEMA publishes this IFR amending its regulations governing the Individual Assistance program to increase equity by simplifying processes, removing barriers to entry, and increasing eligibility for certain types of assistance under the program. Specifically, the IFR increases eligibility for home repair assistance by amending the definitions and application of the terms safe, sanitary, and functional, allowing assistance for certain accessibility-related items, and amending its approach to evaluating insurance proceeds; allows for the re-opening of the applicant registration period when the President adds new counties to the major disaster declaration; simplifies the documentation requirements for continued temporary housing assistance; simplifies the appeals process; simplifies the process to request approval for a late registration; removes the requirement to apply for a Small Business Administration loan as a condition of eligibility for ONA; and establishes additional eligible assistance under ONA for serious needs, displacement, disaster-damaged computing devices and essential tools for self-employed individuals. FEMA also makes revisions to reflect changes to statutory authority that have not yet been implemented in regulation, to include provisions for utility and security deposit payments, lease and repair of multifamily rental housing, child care assistance, maximum assistance limits, and waiver authority.

This rule has been evaluated by FEMA and due to the administrative nature, FEMA has determined the rule does not have the potential to affect Federally listed species or designated critical habitat. As such, a ''No Effect'' determination has been made for these activities. Per the ESA regulations, notification to, and consultation with, the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service are not required for activities with a ''No Effect'' determination.

R. Congressional Review of Agency Rulemaking

Under the Congressional Review of Agency Rulemaking Act (CRA), 5 U.S.C. 801–808, before a rule can take effect, the Federal agency promulgating the rule must submit to Congress and to the GAO a copy of the rule; a concise general statement relating to the rule, including whether it is a major rule; the proposed effective date of the rule; a copy of any cost-benefit analysis; descriptions of the agency's actions under the RFA and the Unfunded Mandates Reform Act; and any other information or statements required by relevant Executive orders.

FEMA has submitted this interim final rule to the Congress and to GAO pursuant to the CRA. OMB has determined that this rule is a ''major rule'' within the meaning of the CRA.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Coastal zone, Community facilities, Disaster assistance, Fire prevention, Grant programs—housing and community development, Housing, Insurance, Intergovernmental relations, Loan programs—housing and community development, Natural resources, Penalties, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Federal Emergency Management Agency amends 44 CFR part 206 as follows:

PART 206—FEDERAL DISASTER ASSISTANCE

■ 1. The authority citation for part 206 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.;* Department of Homeland Security Delegation 9001.1; sec. 1105, Pub. L. 113–2, 127 Stat. 43 (42 U.S.C. 5189a note).

Subpart D—Federal Assistance to Individuals and Households

§ 206.101 [Removed and Reserved]

■ 2. Remove and reserve § 206.101.
■ 3. Amend § 206.110 by:
■ a. Revising the first sentence of paragraph (a), paragraphs (b), (c), (d), and (e);
■ b. Revising paragraph (h) introductory text;
■ c. Removing paragraph (h)(2), redesignating paragraphs (h)(3) and (4) as (h)(2) and (3), and revising newly redesignated paragraph (h)(3);
■ d. Revising paragraphs (i), (j)(2) introductory text, and (j)(2)(ii);
■ e. Revising the first sentence of paragraph (k)(2), the first sentence of paragraph (k)(3)(i) introductory text, and the first sentence of paragraph (k)(3)(i)(A);
■ f. Revising paragraph (m); and
■ g. Adding paragraph (n).

The additions and revisions read as follows:

§ 206.110 Federal assistance to individuals and households.

(a) *Purpose.* This section implements the policy and procedures set forth in the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (Stafford Act), 42 U.S.C. 5174.
* * *

(b) *Maximum amount of assistance.* No individual or household will receive financial assistance greater than $25,000 under this subpart with respect to a single major disaster or emergency for the repair or replacement of their pre-disaster primary residence. No individual or household will receive financial assistance greater than $25,000 under this subpart with respect to a single major disaster or emergency for Other Needs Assistance. FEMA will adjust the $25,000 limits annually to reflect changes in the Consumer Price Index (CPI) for All Urban Consumers that the Department of Labor publishes.

(1) The maximum amount of financial assistance excludes rental assistance under § 206.117(b)(1)(i) and lodging expense reimbursement under § 206.117(b)(1)(i).

(2) The maximum amount of financial assistance excludes expenses to repair or replace eligible damaged accessibility-related real property improvements and personal property for individuals with disabilities.

(c) *Multiple types of assistance.* One or more types of housing assistance may be made available under this section to meet the needs of individuals and households in the particular disaster situation. FEMA will determine the appropriate types of housing assistance to be provided under this section based on considerations of cost effectiveness, convenience to the individuals and households and the suitability and availability of the types of assistance. An applicant is expected to accept the first offer of housing assistance; unwarranted refusal of assistance may result in the forfeiture of future housing assistance. Temporary housing and repair assistance must be utilized to the fullest extent practicable before other types of housing assistance.

(d) *Date of eligibility.* Eligibility for Federal assistance under this subpart is limited to losses or expenses resulting from damage that occurred during the dates of the incident period established in a presidential declaration that a major disaster or emergency exists, except that reasonable lodging expenses that are incurred in anticipation of and immediately preceding such event may be eligible for Federal assistance under this chapter.

(e) *Period of assistance.* FEMA may provide assistance under this subpart for a period not to exceed 18 months from the date of declaration. The Assistant Administrator for the Recovery Directorate may extend the period of assistance if he/she determines that due to extraordinary circumstances an extension would be in the public interest.
* * * * *

(h) *Duplication of benefits.* In accordance with the requirements of the Stafford Act, 42 U.S.C. 5155, FEMA will not provide assistance under this subpart when any other source has already provided such assistance or when such assistance is available from any other source. In the instance of insured applicants, we will provide assistance under this subpart only when:
* * * * *

(3) Applicants cannot use their insurance because there is no housing on the private market.

(i) *Cost sharing.* (1) Except as provided in paragraph (i)(2) of this section, the Federal share of eligible costs paid under this subpart is 100 percent.

(2) Federal and State cost shares for ''Other Needs'' assistance under the Stafford Act, 42 U.S.C. 5174(e) and (f), are as follows:

(i) The Federal share is 75 percent; and

(ii) The non-Federal share is 25 percent and must be paid from funds made available by the State. If the State does not provide the non-Federal share to FEMA before FEMA begins to provide assistance to individuals and households under the Stafford Act, 42 U.S.C. 5174(e), FEMA will still process applications. The State will then be obliged to reimburse FEMA for the non-Federal cost share of such assistance on a monthly basis. If the State does not provide such reimbursement on a monthly basis, then FEMA will issue a billing notice to the State on a monthly basis for the duration of the program. FEMA will charge interest, penalties, and administrative costs on delinquent billing notices in accordance with the Debt Collection Improvement Act. Cost shared funds, interest, penalties and administrative costs owed to FEMA through delinquent billing notices may be offset from other FEMA disaster assistance programs (*i.e.,* Public Assistance) from which the State is receiving assistance, or future grant awards from FEMA or other Federal Agencies. Debt Collection procedures will be followed as outlined in 44 CFR part 11.

(j) * * *

(2) Under the Stafford Act, 42 U.S.C. 5174(f)(2), FEMA must share applicant information with States in order for the States to make available any additional State and local disaster assistance to individuals and households.
* * * * *

(ii) States receiving such applicant information must not further disclose the information to other entities, and must not use it for purposes other than providing additional State or local disaster assistance to individuals and households.

(k) * * *

(2) Individuals or households that are located in a special flood hazard area may not receive Federal Assistance for National Flood Insurance Program (NFIP)—insurable real and/or personal property, damaged by a flood, unless the community in which the property is located is participating in the NFIP (See 44 CFR 59.1), or the exception in 42 U.S.C. 4105(d) applies. * * *

(3) *Flood insurance purchase requirement:* (i) As a condition of the assistance and in order to receive any Federal assistance for future flood damage to any insurable property, individuals and households named by FEMA as eligible recipients under the Stafford Act, 42 U.S.C. 5174, who receive assistance, due to flood damage, for acquisition or construction purposes under this subpart must buy and maintain flood insurance, as required in 42 U.S.C. 4012a, for at least the assistance amount. * * *

(A) If the applicant is a homeowner, flood insurance coverage must be maintained at the address of the flood-

damaged property for as long as there is a residential building (See 44 CFR 59.1) at the address. * * *

* * * * *

(m) *Historic preservation.* Assistance provided under this subpart generally does not have the potential to affect historic properties and thus FEMA has no further obligations under the National Historic Preservation Act, 54 U.S.C. 306108, with the exception of ground disturbing activities and construction related to §§ 206.117(b)(1)(ii) (direct housing), 206.117(b)(2)(ii)(F) (repair assistance for privately owned roads and bridges), 206.117(b)(3) (replacement assistance), and 206.117(b)(4) (permanent housing construction).

(n) *Severability.* Any provision of this subpart held to be invalid or unenforceable as applied to any person or circumstance should be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision of this subpart is invalid and unenforceable in all circumstances, in which event the provision should be severable from the remainder of this subpart and should not affect the remainder thereof.

■ 4. Amend § 206.111 by:
■ a. Revising the definitions of ''Alternative housing resources'' and ''Dependent'';
■ b. Adding the definition of ''Destroyed'';
■ c. Revising the definitions of ''Displaced applicant'' and ''Eligible hazard mitigation measures'';
■ d. Adding the definition of ''Essential tools'';
■ e. Revising the definitions of ''Fair market rent'' and ''Financial ability'';
■ f. Removing the definition of ''Functional'';
■ g. Adding the definition of ''Functioning'';
■ h. Revising the definition of ''Housing costs'';
■ i. In the definition of ''Manufactured housing sites,'' revise the introductory text and paragraph (3);
■ j. Revising the definitions of ''Owner-occupied'', ''Permanent housing plan'' and ''Reasonable commuting distance'';
■ k. Adding the definitions of ''Recertification'' and ''Repairs'';
■ l. Revising the definitions of ''Safe'', ''Sanitary'', and ''Serious need'';
■ m. Adding the definition of ''State''; and
■ n. Revising the definition of ''Uninhabitable''.

The additions and revisions to read as follows:

§ 206.111 Definitions.

* * * * *

Alternative housing resources means any housing that is available or can quickly be made available in lieu of permanent housing construction and is cost-effective when compared to permanent construction costs. Some examples are rental resources, manufactured housing units, and travel trailers.

* * * * *

Dependent means someone who is normally claimed as such on the Federal tax return of another, according to the Internal Revenue Code. It may also mean the minor children of a couple not living together, where the children live in the affected residence with the parent or guardian who does not claim them on the tax return.

Destroyed means the primary residence is a total loss or damaged to such an extent that repairs are infeasible.

Displaced applicant means one whose disaster-damaged primary residence is uninhabitable, inaccessible, or made unavailable by the landlord.

* * * * *

Eligible hazard mitigation measures are home improvements that an applicant can accomplish in order to reduce or prevent future disaster damage to the primary residence, utilities, or infrastructure.

Essential tools means tools and equipment required for employment and items required for education.

Fair market rent means estimates of rent plus the cost of utilities, except telephone, identified by the Department of Housing and Urban Development as being adequate for existing rental housing in a particular geographic area.

Financial ability means the applicant's capability to pay 30 percent of gross post-disaster household income for housing. When computing financial ability, extreme or unusual financial circumstances may be considered by FEMA.

* * * * *

Functioning means an item or home capable of being used for its intended purpose.

* * * * *

Housing costs means rent and mortgage payments, including principal, interest, real estate taxes, real property insurance, homeowners or condominium association fees, and utility costs.

* * * * *

Manufactured housing sites means those sites used for the placement of travel trailers and other manufactured housing units, including:

* * * * *

(3) *Group site,* a site provided by the State or local government or FEMA, if determined that such site would be more economical or accessible than one that the State or local government provides, that accommodates two or more units and is complete with utilities.

* * * * *

Owner-occupied means that the residence is occupied by:

(1) The legal owner with verifiable documentation; or

(2) A person who does not hold formal title to the residence and pays no rent, but can produce verifiable documentation demonstrative of legal responsibility including tax payment receipts; receipts for major repairs, maintenance, or improvements of the residence; court documents, a letter from a public official, or, for mobile home or travel trailer owners residing in a commercial park, a letter from the mobile home park owner or manager; or

(3) A person who has verifiable documentation of lifetime occupancy rights with formal title vested in another.

Permanent housing plan means a realistic plan that, within a reasonable timeframe, puts the displaced applicant back into permanent housing that is similar to their pre-disaster housing situation. A reasonable timeframe includes sufficient time within the period of assistance for securing funds and services to repair the home, completing repairs or locating a permanent dwelling, and moving into the dwelling.

* * * * *

Reasonable commuting distance means a distance that does not place undue hardship on an applicant. It also takes into consideration the traveling time involved due to road conditions, *e.g.,* mountainous regions or road closures and the normal commuting patterns of the area.

Recertification means the process that FEMA uses to evaluate an applicant's eligibility for continued temporary housing assistance under § 206.114.

Repairs means repairs of a quality necessary for a safe and sanitary living or functioning condition.

Safe means secure from hazards or threats to occupants.

Sanitary means free of health hazards.

Serious need means the requirement for an item, or service, that is necessary to an applicant's ability to prevent,

mitigate, or overcome a disaster-related hardship, injury or adverse condition.

* * * * *

State means, for the purposes of this subpart and where consistent with the requirements of the Stafford Act, any State as defined in § 206.2(a)(22) or Indian tribal government as defined in the Stafford Act (42 U.S.C. 5122(6)).

Uninhabitable means the dwelling is not safe or sanitary.

* * * * *

■ 5. Amend § 206.112 by:
■ a. Revising paragraph (b);
■ b. Redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c); and
■ c. Revising the second sentence of newly redesignated paragraph (d).

The additions and revisions read as follows:

§ 206.112 Registration period.

* * * * *

(b) *Extension of the registration period.* FEMA may extend the registration period when the State requests more time to collect registrations from the affected population. FEMA may also extend the standard registration period when necessary to establish the same registration deadline for contiguous counties or States.

(c) *Reopening of the registration period.* After the registration period for the major disaster or emergency has expired, FEMA may reopen the registration period for 60 days only when the President's declaration is amended to include additional counties and only for the additional counties.

(d) *Late registrations.* * * * We will process late registrations for those registrants who explain the reason for the delay in their registration.

■ 6. Amend § 206.113 by:
■ a. Revising paragraphs (a) introductory text and (a)(1);
■ b. Removing paragraph (a)(4) and redesignating paragraphs (a)(5) through (a)(9) as paragraphs (a)(4) through (a)(8), respectively;
■ c. Revising newly redesignated paragraphs (a)(4), (5), (7), and (8) and adding paragraph (9);
■ d. Revising paragraphs (b)(1) through (5), (9) and (10).

The addition and revisions read as follows:

§ 206.113 Eligibility factors.

(a) *Conditions of eligibility.* In general, FEMA may provide assistance to individuals and households who qualify for such assistance under the Stafford Act, 42 U.S.C. 5174, and this subpart. FEMA may only provide assistance:

(1) When the individual or household has incurred a disaster-related necessary expense and serious need in the State in which the disaster has been declared, without regard to their residency in that State;

* * * * *

(4) In a situation where the applicant has insurance, but the applicant cannot use their insurance because housing is not available on the private market;

(5) In a situation where the applicant has insurance, when the insured individual or household has accepted all assistance from other sources for which he, she, or they are eligible, including insurance, and that assistance and insurance is insufficient to cover the necessary expense and serious need;

* * * * *

(7) With respect to housing assistance, if the primary residence has been destroyed, is uninhabitable, or is inaccessible;

(8) With respect to housing assistance, if a renter's primary residence is no longer available as a result of the disaster; and

(9) With respect to home repair for accessibility-related items, if an applicant meets the following conditions:

(i) The applicant is either an individual with a disability as defined in 42 U.S.C. 5122 whose disability existed prior to the disaster and whose primary residence was damaged by the disaster, or an individual with a disability as defined in 42 U.S.C. 5122 whose disability was caused by the disaster and whose primary residence was damaged by the disaster;

(ii) The real property component is necessary to meet the accessibility-related need of the household; and

(iii) The real property component is not covered by insurance or any other source.

(b) * * *

(1) For housing or displacement assistance, to individuals or households who are displaced from other than their pre-disaster primary residence;

(2) For temporary housing or displacement assistance, to individuals or households who have adequate rent-free housing accommodations;

(3) For temporary housing or displacement assistance, to individuals or households who own a secondary or vacation residence within reasonable commuting distance to the disaster area, or who own available rental property that meets their temporary housing needs;

(4) For temporary housing or displacement assistance to individuals or households who evacuated the residence in response to official warnings solely as a precautionary measure and are able to return to and safely occupy the residence immediately after the incident;

(5) For housing assistance, for improvements or additions to the pre-disaster condition of property, except for the following:

(i) Improvements or additions required to make repairs that comply with local and State ordinances;

(ii) Eligible hazard mitigation measures; or

(iii) Accessibility-related items for individuals with disabilities, consistent with paragraph (a)(9) of this section;

* * * * *

(9) For business losses, including farm businesses; or

(10) For any items not otherwise authorized by §§ 206.117 and 206.119.

■ 7. Revise § 206.114 to read as follows:

§ 206.114 Criteria for continued or additional assistance.

(a) *General.* FEMA expects all recipients of assistance under this subpart to obtain and occupy permanent housing at the earliest possible time. FEMA may provide initial and continued temporary housing assistance, financial or direct, upon request during the period of assistance, based on need, and generally only when adequate, alternate housing is not available or when the permanent housing plan has not been fulfilled through no fault of the applicant.

(b) *Rental assistance.* FEMA may provide initial financial assistance for rent, also known as initial rental assistance, as described in § 206.117(b)(1)(i), to displaced eligible applicants to rent alternate housing accommodations for an initial time period established by FEMA.

(1) FEMA may periodically recertify all displaced applicants who received initial rental assistance and request continued rental assistance. All displaced applicants requesting continued rental assistance must take the following actions at certain points throughout the recertification process:

(i) Submit rent receipts to show that they have exhausted or will exhaust previously provided funds;

(ii) Provide documentation demonstrating they lack the financial ability to pay their post-disaster housing costs and have a continued need for rental assistance;

(iii) Establish a realistic permanent housing plan; and

(iv) Provide documentation showing that they are making efforts to obtain permanent housing.

(2) FEMA expects that pre-disaster renters will use their initial rental assistance to obtain permanent housing. However, FEMA may provide continued rental assistance to pre-disaster renters with a continuing disaster-related housing need.

(c) *Direct housing assistance.* FEMA may provide direct housing assistance as described in § 206.117(b)(1)(ii), to displaced eligible applicants who are unable to make use of financial assistance to rent adequate alternate housing. FEMA may periodically recertify all displaced applicants receiving direct housing assistance for continued direct housing assistance. All displaced applicants who need continued direct housing assistance must take the following actions at certain points throughout the recertification process:

(1) Establish a realistic permanent housing plan; and

(2) Provide documentation showing that they are making efforts to obtain permanent housing throughout the recertification process.

(d) *Other assistance.* FEMA may provide repairs or housing replacement assistance, as described in § 206.117(b)(2) and § 206.117(b)(3), lodging expense reimbursement, as described in § 206.117(b)(1)(i), or other needs assistance, as described in § 206.119, to eligible applicants.

(1) If FEMA requires more information to process an applicant's initial request for assistance, it may request additional information.

(2) After the initial award of assistance, applicants requesting additional assistance for repairs, housing replacement, lodging expense reimbursement, personal property, transportation, child care, medical, dental, funeral, moving and storage, or other necessary expenses and serious needs may submit an appeal as outlined in § 206.115 and will be required to submit information and/or verifiable documentation established via guidance identifying the additional need.

■ 8. Amend § 206.115 by:
■ a. Revising the first sentence of paragraph (a) introductory text;
■ b. Revising paragraphs (b) and (c) and the second sentence of paragraph (d);
■ c. Removing paragraph (e); and
■ f. Redesignating paragraph (f) as paragraph (e) and revising newly redesignated paragraph (e).

The revisions read as follows:

§ 206.115 Appeals.

(a) Under the provisions of the Stafford Act, 42 U.S.C. 5189a, applicants for assistance under this subpart may appeal any determination of eligibility for assistance made under this subpart. * * *

* * * * *

(b) Appeals must include a written explanation or verifiable documentation for the appeal and meet the requirements of § 206.117, as applicable. See §§ 206.117(b)(2)(vi), 206.117(b)(3)(iv), and 206.117(b)(4)(iii). If someone other than the applicant files the appeal, then the applicant must also submit a signed statement giving that person authority to represent them. If a written explanation is submitted, it must be signed by the applicant or a person the applicant designates to represent them.

(c) Applicants must appeal to FEMA for decisions made under this subpart, unless FEMA has made a grant to the State to provide assistance to individuals and households under § 206.120(a), State administration of other needs assistance; then the applicant must appeal to the State.

(d) * * * If someone other than the applicant is submitting the request, then the applicant must also submit a signed statement giving that person authority to represent them.

(e) FEMA or the appropriate State official will review the original decision after receiving the appeal. FEMA or the State, as appropriate, will give the appellant a written notice of the disposition of the appeal and a reason for the determination within 90 days of receiving the appeal. The decision of the FEMA or State appellate authority is final.

■ 9. Amend § 206.117 by:
■ a. In paragraph (a):
■ i. Removing the definition of ''Caused by the disaster'';
■ ii. Adding the definition of ''Multifamily Rental Housing''; and
■ iii. Revising the definition of ''''Real Property Component'' or ''Component''''';
■ b. Revising paragraphs (b)(1)(i), (b)(1)(ii)(A) through (C) and (E);
■ c. Redesignating paragraphs (b)(1)(ii)(F) through (I) as paragraphs (b)(1)(ii)(G) through (J), respectively, and adding a new paragraph (F);
■ d. Revising the first sentence of newly redesignated paragraph (b)(1)(ii)(G), paragraph (b)(1)(ii)(H)(*4*), and the second sentence of newly redesignated paragraph (b)(1)(ii)(I);
■ e. Revising paragraphs (b)(2)(i), (b)(2)(ii) introductory text, (b)(2)(ii)(H), and (b)(2)(iii);
■ f. Removing paragraph (b)(2)(iv) and redesignating paragraphs (b)(2)(v) through (vii) as paragraphs (b)(2)(iv) through (vi);
■ g. Revising newly redesignated paragraphs (b)(2)(iv) and (b)(2)(vi);
■ h. Revising paragraphs (b)(3) and (b)(4)(i)(A);
■ i. Removing paragraph (b)(4)(i)(B) and redesignating paragraphs (C) through (F) as paragraphs (B) through (E); and
■ j. Revising newly redesignated paragraph (b)(4)(i)(E) and the first two sentences of (b)(4)(iii).

The additions and revisions read as follows:

§ 206.117 Housing assistance.

(a) * * *

''*Multifamily Rental Housing*'' means a rental property that contains three or more dwelling units contained within one building, each such unit providing complete and independent living facilities for one or more persons, including permanent provisions for living, sleeping, cooking, and sanitation.

''*Real Property Component*'' *or* ''*Component*'' means each individual part of a dwelling as enumerated in paragraph (b)(2)(ii) of this section.

* * * * *

(b) *Types of housing assistance*—(1) *Temporary housing assistance*—(i) *Rental assistance.* Eligible displaced applicants may receive rental assistance to rent alternate housing resources. FEMA may also provide assistance for the reasonable cost of any transportation, utility hookups, or installation of a manufactured housing unit or recreational vehicle to be used for housing. This may include lodging expense reimbursement for reasonable short-term lodging expenses for individuals or households who have not received displacement assistance (See § 206.119(b)(2)) in the immediate aftermath of a disaster.

(A) FEMA will include all members of a pre-disaster household in a single registration and will provide assistance for one temporary housing residence, unless FEMA determines that the size or nature of the household requires that we provide assistance for more than one residence.

(B) FEMA will base the amount of assistance on the current fair market rent for existing rental units. FEMA will further base the applicable rate on the location of the rental unit and the number of bedrooms the household requires, as determined by FEMA.

(C) Rental assistance may include the payment of the cost of utilities, excluding telephone, cable, television, and internet service.

(D) Rental assistance may include the payment of the cost of security deposits, not to exceed an amount equal to the fair market rent for one month, as determined under paragraph (b)(1)(i)(B) of this section.

(E) Applicants that receive displacement assistance under § 206.119(b)(2) must request rental assistance if their disaster-caused temporary housing needs continue once displacement assistance is exhausted.

(ii) *Direct assistance.* (A) FEMA may provide direct assistance in the form of purchased or leased temporary housing units directly to displaced applicants who lack available housing resources and are unable to make use of the assistance provided under paragraph (b)(1)(i) of this section.

(B) FEMA will include all members of a pre-disaster household in a single application and will provide assistance for one temporary housing unit, unless FEMA determines that the size or nature of the household requires that we provide assistance for more than one temporary housing unit.

(C) Any site upon which a FEMA-provided temporary housing unit is placed must comply with applicable State and local codes and ordinances, as well as 44 CFR part 9, Floodplain Management and Protection of Wetlands, and all other applicable environmental and historic preservation laws, regulations, Executive orders, and agency policy.

* * * * *

(E) FEMA-provided or funded temporary housing units may be placed in the following locations:

(*1*) A commercial site that is complete with utilities, when FEMA determines that the upgrading of commercial sites, or installation of utilities on such sites, will provide more cost-effective, timely and suitable temporary housing than other types of resources.

(*2*) A private site that an applicant provides, complete with utilities, when FEMA determines that the cost of installation or repairs of essential utilities on private sites will provide more cost effective, timely, and suitable temporary housing than other types of resources.

(*3*) A group site that accommodates two or more temporary housing units and is complete with utilities, provided by the State or local government, when FEMA determines that the cost of developing a group site provided by the State or local government, to include installation or repairs of essential utilities on the sites, will provide more cost effective, timely, and suitable temporary housing than other types of resources.

(*4*) A group site provided by FEMA, if determined that such a site would be more economical or accessible than one that the State or local government provides.

(F) If FEMA determines it would be a cost-effective alternative to other temporary housing options, FEMA may enter into lease agreements with owners of multifamily rental housing properties to house displaced applicants eligible for assistance under this subpart.

(*1*) FEMA may only enter into lease agreements with owners of multifamily rental housing properties impacted by a major disaster or located in areas covered by a major disaster declaration.

(*2*) FEMA may make repairs or improvements to properties under such lease agreements, to the extent necessary to serve as temporary housing, provided, however, that the value of the improvements or repairs must be deducted from the value of the lease agreement.

(G) After the end of the 18-month period of assistance, FEMA may begin to charge up to the fair market rent for each temporary housing unit provided.

* * *

(H) * * *

(*4*) The occupant(s) failed to comply with any term of the lease/rental agreement or other rules of the site where the temporary housing unit is located; or

* * * * *

(I) * * * This notice will specify the reasons for termination of assistance and occupancy, the date of termination, the procedure for appealing the determination, and the occupant's liability for such additional charges as FEMA deems appropriate after the termination date, including fair market rent for the unit.

* * * * *

(2) *Repairs.* (i) FEMA may provide financial assistance for the repair of an owner-occupied primary residence if:

(A) The eligibility criteria in § 206.113 are met;

(B) FEMA determines the dwelling was damaged by the disaster; and,

(C) The damage is not covered by insurance.

(ii) FEMA may provide financial assistance for the repair of the disaster damaged dwelling to a safe and sanitary living or functioning condition including:

* * * * *

(H) Eligible hazard mitigation measures.

(iii) FEMA financial assistance for the repair of disaster damage will be limited to repairs of a quality necessary for a safe and sanitary living or functioning condition. In some instances, when the extent of the damage is unclear, FEMA may provide assistance for the average cost of a licensed technician's professional assessment. FEMA may provide for the replacement of a component if repair is not feasible.

(iv) Eligible individuals or households may receive up to the maximum amount of assistance (See § 206.110(b)) to repair damage to their primary residence irrespective of other financial resources, except insurance proceeds.

* * * * *

(vi) If the applicant disputes a determination made by FEMA regarding eligibility for repair assistance, the applicant may appeal that determination pursuant to the procedures in § 206.115. In addition to the requirements in § 206.115, the applicant must provide proof that the component meets the requirements of paragraph (b)(2)(i) of this section. If the applicant disputes the amount of repair assistance awarded, the applicant must also provide justification for the amount sought.

(3) *Housing replacement.* (i) FEMA may provide financial assistance for the replacement of an owner-occupied primary residence if:

(A) The eligibility criteria in § 206.113 are met;

(B) The residence was destroyed by the disaster; and

(C) The damage to the residence is not covered by insurance.

(ii) If replacement assistance is granted, the applicant may either use the maximum amount of assistance (See § 206.110(b)) to replace the dwelling in its entirety, or may use the assistance toward the cost of acquiring a new permanent residence.

(iii) Housing replacement assistance will be based on the average replacement cost established by FEMA for the type of residence destroyed, or the statutory maximum (See § 206.110(b)), whichever is less.

(iv) If the applicant disputes a determination made by FEMA regarding eligibility for replacement assistance, the applicant may appeal that determination pursuant to the procedures in § 206.115. In addition to the requirements in § 206.115, the applicant must provide proof that repair is not feasible, or will not ensure the safety or health of the occupant. If the applicant disputes the amount of replacement assistance awarded, the applicant must also provide justification for the amount sought.

(4) * * *

(i) * * *

(A) The eligibility criteria in § 206.113 are met;

* * * * *

(E) The residence is in a location where alternative housing resources are not available and the types of financial

or direct temporary housing assistance described in paragraphs (b)(1), (2), and (3) of this section are unavailable, infeasible, or not cost-effective.

* * * * *

(iii) If the applicant disputes a determination made by FEMA regarding eligibility for construction assistance, the applicant may appeal that determination pursuant to the procedures in § 206.115. In addition to the requirements in § 206.115, the applicant must provide proof that the property is in a location where alternative housing resources are not available. * * *

■ 10. Revise § 206.118 to read as follows:

§ 206.118 Disposal of housing units.

(a) FEMA may sell temporary housing units purchased under § 206.117(b)(1)(ii), Temporary housing, direct assistance, as follows:

(1) *Sale to an occupant.* (i) FEMA may sell a temporary housing unit to the occupant, if they lack permanent housing and have a site that complies with local codes and ordinances and part 9 of this Title.

(ii) FEMA may approve adjustments to the sales price when selling a temporary housing unit to the occupant if the occupant is unable to pay the fair market value of the temporary housing unit and when doing so is in the best interest of the occupant and FEMA.

(iii) FEMA may sell a temporary housing unit to the occupant only on the condition that the purchaser agrees to obtain and maintain hazard insurance, as well as flood insurance on the temporary housing unit if it is or will be in a designated Special Flood Hazard Area.

(2) *Other methods of disposal.* (i) FEMA may sell, transfer, donate, or otherwise make a temporary housing unit available directly to a State or other governmental entity, or to a voluntary organization, for the sole purpose of providing temporary housing to eligible displaced applicants in major disasters and emergencies. As a condition of the sale, transfer, or donation, or other method of provision, the State, governmental entity, or voluntary organization must agree to:

(A) Comply with the nondiscrimination provisions of the Stafford Act, 42 U.S.C. 5151; and

(B) Obtain and maintain hazard insurance on the temporary housing unit, as well as flood insurance if the housing unit is or will be in a designated Special Flood Hazard Area.

(ii) FEMA may also sell temporary housing units at a fair market value to any other person.

(b) A temporary housing unit will be sold ''as is, where is'', except for repairs FEMA deems necessary to protect health or safety, which are to be completed before the sale. There will be no implied warranties. In addition, FEMA will inform the purchaser that they may have to bring the installation of the temporary housing unit up to codes and standards that are applicable at the proposed site.

■ 11. Revise § 206.119 to read as follows:

§ 206.119 Financial assistance to address other needs.

(a) *Purpose.* FEMA and the State may provide financial assistance to individuals and households who are adversely affected by a major disaster and have other verifiable, documented disaster-related necessary expenses or serious needs.

(b) *Types of assistance.* (1) *Serious needs.* Necessary expenses to assist applicants who report they are displaced as a result of the disaster, who report a need for shelter as a result of the disaster, or who have other emergency disaster expenses. These needs will vary according to each applicant and FEMA will not require receipts documenting the use of this assistance. FEMA will adjust the amount of this assistance to reflect changes in the CPI for all Urban Consumers that the Department of Labor publishes.

(2) *Displacement.* Necessary expenses to assist displaced applicants with short-term living arrangements immediately following a disaster. Applicants must have registered within the 60-day or extended registration period. The award amount is based on a time period established by FEMA and approved in the State Administrative Option, as required by § 206.120(b). FEMA will not require receipts documenting the use of this assistance.

(3) *Medical and dental.* Necessary expenses to assist applicants with medical and dental costs, which may include the following:

(i) Medical service costs;

(ii) Dental service costs;

(iii) Repair or replacement of medical or dental equipment;

(iv) Loss or injury of a service animal; and

(v) Costs for prescription medicines related to eligible medical or dental services, or which need to be replaced due to the disaster.

(4) *Child care.* Necessary expenses to assist applicants with child care costs, which may include the following:

(i) Standard child care service fees, including personal assistance services that support activities of daily living for children with disabilities; and

(ii) Registration and health inventory fees for applicants who require a new child care provider.

(5) *Funeral.* Necessary expenses to assist applicants with funeral costs, which may include the following:

(i) Funeral services;

(ii) Burial or cremation; and

(iii) Other related funeral expenses.

(6) *Personal property.* Necessary expenses to assist applicants whose primary residences were damaged by the disaster with personal property costs, which may include the following:

(i) Clothing;

(ii) Household items, furnishings or appliances;

(iii) Computing devices;

(iv) Essential tools, specialized or protective clothing, computing devices, and equipment required for employment;

(v) Computing devices, uniforms, schoolbooks and supplies required for educational purposes; and

(vi) Cleaning or sanitizing any eligible personal property item.

(7) *Transportation.* Necessary expenses to assist applicants with transportation costs, which may include the following:

(i) Repairing or replacing vehicles;

(ii) Public transportation; and

(iii) Other transportation related costs or services.

(8) *Moving and storage.* Necessary expenses to assist applicants whose primary residences were damaged by the disaster with costs related to moving and storing personal property, which may include the following:

(i) Moving and storing personal property to avoid additional disaster damage;

(ii) Storage of personal property while disaster-related repairs are being made to the primary residence; and

(iii) Return of the personal property to the individual or household's primary residence.

(9) *Group Flood Insurance purchase.* Individuals identified by FEMA as eligible for assistance for flood insurable damage under the Stafford Act, 42 U.S.C. 5174, as a result of flood damage caused by a Presidentially-declared major disaster and who reside in a special flood hazard area (SFHA) may be included in a Group Flood Insurance Policy (GFIP) established under the National Flood Insurance Program (NFIP) regulations at 44 CFR 61.17.

(i) The premium for the GFIP is a necessary expense within the meaning of this section. FEMA or the State must withhold this portion of the Other Needs award and provide it to the NFIP

on behalf of individuals and households who are eligible for coverage. The coverage must be equivalent to the maximum assistance amount established under the Stafford Act, 42 U.S.C. 5174.

(ii) FEMA or the State IHP staff must provide the NFIP with records of individuals who received assistance for flood-insurable losses within a SFHA and are to be insured through the GFIP. Records of applicants to be insured must be accompanied by payments to cover the premium amounts for each applicant for the 3-year policy term. The NFIP will then issue a Certificate of Flood Insurance to each applicant. Flood insurance coverage becomes effective on the 30th day following the receipt of records of GFIP insureds and their premium payments from the State or FEMA, and such coverage terminates 36 months from the inception date of the GFIP, which is 60 days from the date of the disaster declaration.

(iii) Insured applicants would not be covered if they are determined to be ineligible for coverage based on a number of exclusions established by the NFIP. Therefore, once applicants/policyholders receive the Certificate of Flood Insurance that contains a list of the policy exclusions, they should review that list to see if they are ineligible for coverage. Those applicants who fail to do this may find that their property is, in fact, not covered by the insurance policy when the next flooding incident occurs and they file for losses. Once the applicants find that their damaged buildings, contents, or both, are ineligible for coverage, they should notify the NFIP in writing in order to have their names removed from the GFIP, and to have the flood insurance maintenance requirement expunged from the data-tracking system.

(10) *Miscellaneous.* Other miscellaneous items or services that FEMA, in consultation with the State, determines are necessary expenses and serious needs.

Subpart E—[Removed and Reserved]

■ 12. Remove and reserve Subpart E, consisting of §§ 206.131 through 206.140.

Subpart F—Other Individual Assistance

■ 13. Amend § 206.191 by:
■ a. Revising paragraphs (a), (b)(1), (d)(2)(ii) through (iv);
■ b. Revising the first sentence of paragraph (d)(4) introductory text and paragraph (d)(4)(ii);
■ c. Revising paragraph (e)(1)(i), (e)(2) introductory text, the second sentence of (e)(2)(iii), (e)(3) through (5) and paragraph (f); and
■ e. Adding paragraph (g).

The addition and revisions read as follows.

§ 206.191 Duplication of benefits.

(a) *Purpose.* This section establishes the policies for implementing the Stafford Act, 42 U.S.C. 5155, entitled Duplication of Benefits. This section relates to assistance for individuals and families.

(b) * * *

(1) Federal agencies providing disaster assistance under the Act or under their own authorities triggered by the Act, must cooperate to prevent and rectify duplication of benefits, according to the general policy guidance of the Federal Emergency Management Agency. The agencies must establish appropriate agency policies and procedures to prevent duplication of benefits.

* * * * *

(d) * * *

(2) * * *

(ii) Housing assistance pursuant to the Stafford Act, 42 U.S.C. 5174;

(iii) Other Needs assistance, pursuant to the Stafford Act, 42 U.S.C. 5174;

(iv) Small Business Administration and Department of Agriculture disaster loans;

* * * * *

(4) If following the delivery sequence concept would adversely affect the timely receipt of essential assistance by an individual or household, an agency may offer assistance which is the primary responsibility of another agency. * * *

* * * * *

(ii) In the case where the individual or household has refused assistance from Agency A, Agency A must notify Agency B that it must recover assistance previously provided.

(e) * * *

(1) * * *

(i) In making an eligibility determination, FEMA, in the case of federally operated programs, or the State, in the case of State operated programs, must determine whether assistance is the primary responsibility of another agency to provide, according to the delivery sequence; and determine whether that primary response agency can provide assistance in a timely way.

* * * * *

(2) *Programs under the Act vs. insurance.* In making an eligibility determination, FEMA or the State must:

* * * * *

(iii) * * * Where flood insurance is involved, FEMA must coordinate with the Federal Insurance Administration.

* * *

(3) *Random sample.* Each disaster assistance agency is responsible for preventing and rectifying duplication of benefits under the general authority of the Stafford Act, 42 U.S.C. 5155. To determine whether duplication has occurred and established procedures have been followed, FEMA must, within 90 days after the close of the disaster assistance program's application period, for selected disaster declarations, examine on a random sample basis, FEMA's and other government and voluntary agencies' case files and document the findings in writing.

(4) *Duplication when assistance under the Act is involved.* If duplication is discovered, FEMA must determine whether the duplicating agency followed its own remedial procedures.

(i) If the duplicating agency followed its procedures and was successful in correcting the duplication, FEMA will take no further action. If the agency was not successful in correcting the duplication, and FEMA is satisfied that the duplicating agency followed its remedial procedures, no further action will be taken.

(ii) If the duplicating agency did not follow its duplication of benefits procedures, or FEMA is not satisfied that the procedures were followed in an acceptable manner, then FEMA must provide an opportunity for the agency to take the required corrective action. If the agency cannot fulfill its responsibilities for remedial action, FEMA must notify the recipient of the excess assistance, and after examining the debt, then as appropriate, take those recovery actions in conjunction with agency representatives for each identified case in the random sample (or larger universe, at FEMA's discretion).

(5) *Duplication when assistance under other authorities is involved.* When the random sample shows evidence that duplication has occurred and corrective action is required, FEMA must urge the duplicating agency to follow its own procedures to take corrective action, and must work with the agency toward that end. Under its authority in the Stafford Act, 42 U.S.C. 5155, FEMA must require the duplicating agency to report to FEMA on the agency's attempt to correct the duplications identified in the sample.

(f) *Recovering FEMA funds: debt collection.* Funds due to FEMA are recovered in accordance with the Department of Homeland Security's Debt Collection Regulations (6 CFR part 11—Claims) and the Federal Claims Collection Standards (Department of the Treasury—Department of Justice) (31

CFR chapter IX). Section 1216 of the Disaster Recovery Reform Act of 2018, 42 U.S.C. 5174a, also provides FEMA the authority to waive debts owed by individuals and households who received assistance under subpart D of this part.

(g) *Severability.* Any provision of this section held to be invalid or unenforceable as applied to any person or circumstance should be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision of this section is invalid and unenforceable in all circumstances, in which event the provision should be severable from the remainder of this section and should not affect the remainder thereof.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–00677 Filed 1–19–24; 8:45 am]

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Part III

Federal Communications Commission

47 CFR Parts 0, 1, and 16

The Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, and 16

[GN Docket No. 22–69; FCC 23–100; FR ID 190877]

The Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts rules pursuant to section 60506 of the Infrastructure Investment and Jobs Act (Infrastructure Act) that establish a framework to facilitate equal access to broadband internet access service by preventing digital discrimination of access. These rules address policies and practices that impede equal access to broadband, while taking into account issues of technical and economic feasibility that pose serious challenges to full achievement of the equal access objective. The rules constitute an effective, balanced means to accomplish Congress's objective of ensuring that historically unserved and underserved communities throughout the Nation have equal opportunity to receive high-speed broadband service comparable to that received by others, without discrimination as to the terms and conditions on which that service is received.

DATES: Effective March 22, 2024, except for the amendment to 47 CFR 1.717 (amendatory instruction 5), which is delayed indefinitely. FCC will publish a document in the **Federal Register** announcing the effective date for the amendment to 47 CFR 1.717.

FOR FURTHER INFORMATION CONTACT: Wireline Competition Bureau, Competition Policy Division, Aurélie Mathieu, at (202) 418–2194, *Aurelie.Mathieu@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 Report and Order (*Report and Order*) in GN Docket No. 22–69, FCC 23–100, adopted on November 15, 2023, and released on November 20, 2023. The full text of this document is available for download at *https://docs.fcc.gov/public/attachments/FCC-23-100A1.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).

Final Paperwork Reduction Act of 1995 Analysis

This document may contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. This document will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding.

Congressional Review Act

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

Synopsis

1. In this *Report and Order,* we adopt rules pursuant to section 60506 of the Infrastructure Act that establish a framework to facilitate equal access to broadband internet access service by preventing digital discrimination of access. The Infrastructure Act defines ''broadband internet access service'' for section 60506 and the remainder of Title V as having ''the meaning given the term in § 8.1(b) of [the Commission's rules], or any successor regulation.'' Infrastructure Act 60501(1); 47 CFR 8.1(b) (defining broadband internet access service as ''a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service. This term also encompasses any service that the Commission finds to be providing a functional equivalent of the service described in the previous sentence or that is used to evade the protections set forth in this part.''). In this *Report and Order,* we use the terms ''broadband,'' ''broadband service,'' and ''broadband internet access service'' interchangeably. These rules address policies and practices that impede equal access to broadband, while taking into account issues of technical and economic feasibility that pose serious challenges to full achievement of the equal access objective. The rules we adopt today constitute an effective, balanced means to accomplish Congress's objective of ensuring that historically unserved and underserved communities throughout the Nation have equal opportunity to receive high-speed broadband service comparable to that received by others, without discrimination as to the terms and conditions on which that service is received.

2. The actions taken today are summarized below. Digital Discrimination of Access Defined. In furtherance of our goal to facilitate equal access to broadband internet access service, we adopt the following definition of ''digital discrimination of access'': ''policies or practices, not justified by genuine issues of technical or economic feasibility, that differentially impact consumers' access to broadband internet access service based on their income level, race, ethnicity, color, religion or national origin, or are intended to have such differential impact.'' Under the rules we adopt today, we will investigate conduct alleged to be motivated by discriminatory intent, as well as conduct alleged to have discriminatory effect, based on income level, race, ethnicity, color, religion, or national origin. Consistent with the definition of ''equal access'' in the statute, we find that differentiation as to any available quality of service metric for broadband service may provide a basis for liability under these rules, absent sufficient justification.

3. Technical and Economic Feasibility. Consistent with Congress's directive, our definition of digital discrimination of access fully takes into account ''issues of technical and economic feasibility,'' constituting impediments to full achievement of the equal access goal of the statute. We define ''technically feasible'' to mean ''reasonably achievable as evidenced by prior success by covered entities under similar circumstances or demonstrated technological advances clearly indicating that the policy or practice in question may reasonably be adopted, implemented, and utilized.'' We similarly define ''economically feasible'' to mean ''reasonably achievable as evidenced by prior success by covered entities under similar circumstances or demonstrated new economic conditions clearly indicating that the policy or practice in question may reasonably be adopted, implemented, and utilized.''

4. Consumers Afforded Protection from Digital Discrimination, and

Entities and Services that are Subject to the Prohibition Against Digital Discrimination of Access. We adopt rules focusing on whether policies and practices differentially impact consumers' access to broadband internet access service or are intended to do so. In this vein, we specify that ''consumer'' means current and prospective subscribers to broadband internet access service, including individuals, groups of individuals, organizations, and groups of organizations. Moreover, the scope of the rules we adopt today extends not only to providers of broadband internet access service, but also to entities that facilitate and otherwise affect consumer access to broadband internet access service.

5. We adopt today the same definition of ''broadband internet access service'' that appears in our rules at 47 CFR 8.1(b). In accordance with section 60506, the rules we adopt today shall apply to all policies and practices that affect a consumer's ability to have equal access to broadband internet access service, including but not limited to deployment, network upgrades, and maintenance. Covered elements of service include both technical and non-technical elements of service that may affect a consumer's ability to receive and effectively utilize the service.

6. Enforcement. We adopt rules that allow for enforcement of our prohibition against digital discrimination of access through self-initiated Commission investigations and revise our informal complaint process to accept complaints alleging digital discrimination of access, including offering parties voluntary mediation overseen by Commission staff when appropriate. Possible violations will be investigated by Commission staff using our standard investigative toolkit, and all penalties and remedies will be available when we determine that our rules have been violated. The Commission will consider utilizing consent decrees when appropriate. We decline, at this time, to create an additional process for the filing and adjudication of formal complaints akin to section 208 of the Communications Act.

7. Consumer Complaints. Consistent with Congress's directive, we revise our informal consumer complaint process to accept complaints from consumers or other members of the public that relate to digital discrimination of access by establishing a dedicated pathway for digital discrimination of access complaints including from organizations, and collecting voluntary demographic information from complainants.

8. State and Local Model Policies and Best Practices. We adopt the Communications Equity and Diversity Council's recommendations that propose model policies and practices for states and localities to address digital discrimination of access. We emphasize that these model policies and practices do not foreclose adoption by states and localities of additional measures to ensure equal access to broadband service in their communities.

Background

9. Section 60506 of Division F, Title V of the Infrastructure Act is entitled ''Digital Discrimination.'' This provision supports extensive broadband expansion programs in the Infrastructure Act and requires that the Commission adopt rules to facilitate equal access to broadband internet service. Section 60506(b) reads: ''Not later than 2 years after November 15, 2021, the Commission shall adopt final rules to facilitate equal access to broadband internet access service, taking into account the issues of technical and economic feasibility presented by that objective, including—(1) preventing digital discrimination of access based on income level, race, ethnicity, color, religion, or national origin; and (2) identifying necessary steps for the Commission to take to eliminate discrimination described in paragraph (1).''

10. The Commission's implementation of section 60506 builds on a robust history of Commission regulatory action premised on nondiscrimination and universal service, which, in turn, furthers the goal of broadband internet access for all and addresses the digital divide.

Commission's Efforts To Further Consumer Access to Broadband Internet Service

11. At the core of the Commission's commitment to broadband internet access for all is section 1 of the Communications Act of 1934, as amended, which states the agency's purpose ''to make available, so far as possible,'' a ''rapid, efficient, Nation-wide'' wire and radio communication service with adequate facilities ''to all people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.'' Nondiscrimination and universal service are cornerstone principles and drive agency policies to achieve the broadest possible consumer access to communications services. In the Telecommunications Act of 1996 (1996 Act), Congress expanded the traditional goal of universal service to include increased access to telecommunications and advanced services, such as broadband internet access service, for all consumers at just, reasonable, and affordable rates. The 1996 Act established principles for universal service that focus on increasing access for consumers living in rural and insular areas, and for low-income consumers. Section 706 of the 1996 Act requires the Commission to report annually on whether broadband ''is being deployed to all Americans in a reasonable and timely fashion.''

12. In 2009, Congress directed the Commission to develop a National Broadband Plan to ensure every American has ''access to broadband capability.'' The Commission released the National Broadband Plan in March 2010, highlighting ways to ''[r]eform current universal service mechanisms to support deployment of broadband and voice in high-cost areas; and ensure that low-income Americans can afford broadband; and in addition, support efforts to boost adoption and utilization.''

13. The Commission has long used its Universal Service funding programs to further consumer access to broadband and bridge the digital divide. These funding programs, which preceded the Infrastructure Act, have historically helped to deliver broadband services to low-income consumers and to unserved and underserved communities in rural and insular areas. Further, these programs provide support in various ways, including: offering to low-income consumers discounts on voice service and/or broadband internet access service; providing funding to eligible schools and libraries for affordable broadband services to help connect students and members of local communities; providing funding for health care providers to ensure that patients have access to broadband enabled healthcare services; and offering subsidies to providers to build out, deploy, and maintain networks that provide voice and broadband service in high-cost areas.

14. These Commission actions help to ameliorate a digital divide that has underpinnings in the country's historical segregation and redlining practices in housing. Relying on historical research, data, and surveys, numerous commenters correlate inequities in broadband access to historically segregated housing patterns and discriminatory housing practices. The record in this proceeding reflects that the digital divide significantly tracks housing redlining that came into existence under the National Housing Act of 1934, when the Federal Housing

Administration directed the Home Owners' Loan Corporation to create ''residential security maps.'' These federally created maps outlined as ''high-risk'' those areas highly populated by minorities. Banks used these maps to deny mortgage capital to minority residents living in those high-risk areas, leading to disinvestment in these communities. Against this historical and demographic backdrop, researchers have long found that metropolitan areas with a history of redlining ''generally remain more segregated and more economically disadvantaged, [and] . . . have lower median household income, lower home values, older housing stock, and rents which are lower in absolute terms (but often higher as a percentage of income).'' This history has carried forward to broadband access, as researchers have found that access to broadband in the home can decrease in tandem with historical residential risk classifications, and such differences in broadband access vary depending on income levels, race, and ethnicity.

Consumer Access to Broadband

15. The Commission regularly reports on the number of Americans who lack access to broadband internet access service. While the Commission reported in 2021 that 14.5 million Americans lack access to broadband, an independent study suggested that the actual number was as high as 42 million. Further, Microsoft's data usage, as of 2020, suggested that as many as 120.4 million people in the United States did not *use* the internet at broadband speeds of 25/3 Mbps.

16. The uncomfortable reality is that too many households in the United States lack equal access to broadband. Lack of equal access to broadband is not limited to historically redlined urban communities, but also encompasses and acutely affects both rural and urban low-income communities, other rural communities, and Tribal areas.

The Global COVID–19 Pandemic Heightened the Inequities in Broadband Internet Access

17. The global COVID–19 pandemic compounded the problem of unequal access to broadband internet access service in the United States. The digital divide became more stark as shutdowns caused a heightened need for high-quality broadband internet access service to meet basic needs such as working from home, distance learning, accessing public benefits and services, telehealth, job-hunting, remote worship activities, remote family and social connections, and other daily activities. In 2020, a Pew Research Center survey found that nearly half of adults surveyed stated that internet access was essential during the pandemic. And in that same survey, Pew found that at that time, ''[s]ome 43% of lower-income parents with children whose schools shut down say it is very or somewhat likely their children will have to do schoolwork on their cellphones; 40% report the same likelihood of their child having to use public Wi-Fi to finish schoolwork because there is not a reliable internet connection at home.'' Subsequently, in 2021, Pew surveys found that 57% of households making less than $30,000 had home broadband, compared to 93% of households making $100,000 or more, and additionally, white survey participants were more likely than black and Hispanic survey participants to report having home broadband access.

18. Moreover, based on data contributed by civil society organizations, educational institutions, and private sector companies, among households with broadband access, lower-income communities were observed to have slower effective speeds. For example, broadband internet access service has been found to be 21% lower in Tribal areas, compared to neighboring non-Tribal areas, and download speeds were lower. Overall, research and data indicate that during the pandemic, entrenched disparities in broadband internet access service in low-income, rural, and minority households adversely affected all aspects of daily life, including accessing education, seeking housing and employment online, accessing telehealth medical care, and applying for services. For example, as the pandemic caused the vast majority of K–12 students across the country to receive online instruction, 14% of parents had to access public Wi-Fi because there was no reliable connection to the home. This figure was 4% in high-income households and 23% in lower income households.

Infrastructure Investment and Jobs Act of 2021

19. On November 15, 2021, in the midst of the pandemic, Congress enacted the Infrastructure Act providing $65 billion for broadband programs for the purpose of expanding access and affordability to under-served and unserved areas and addressing the ''digital divide.'' During House debates on the Infrastructure Act, House Majority Whip James Clyburn (D–SC) testified about the harm caused by the digital divide and the need to address inequities in access to high-speed broadband internet service. Division F of the Infrastructure Act is entitled ''Broadband.'' In the legislation, Congress found: (1) Access to affordable, reliable, high-speed broadband is essential to full participation in modern life in the United States; (2) The persistent ''digital divide'' in the United States is a barrier to the economic competitiveness of the United States and equitable distribution of essential public services, including health care and education; (3) The digital divide disproportionately affects communities of color, lower-income areas, and rural areas, and the benefits of broadband should be broadly enjoyed by all; and (4) In many communities across the country, increased competition among broadband providers has the potential to offer consumers more affordable, high quality options for broadband service.

20. The 2019 novel coronavirus pandemic has underscored the critical importance of affordable, high speed broadband for individuals, families, and communities to be able to work, learn, and connect remotely while supporting social distancing.

The Infrastructure Act's Funding Measures Promote Equal Access

21. The Infrastructure Act's funding measures are intended to promote access to broadband internet access service and reduce the digital divide. Under Title I through Title V of Division F of the Act, Congress authorized funding for expansive broadband access, affordability, and digital literacy programs. These programs fall into seven major program areas: the Broadband Equity, Access, and Deployment Program ($42.45 billion), the Affordable Connectivity Program ($14.2 billion) Digital Equity Planning, Capacity and Competitive Grants ($2.75 billion), the Tribal Broadband Connectivity Program ($2 billion), Rural Utilities Service at the Department of Agriculture ($2 billion), the Middle Mile Grant Program ($1 billion), and Private Activity Bonds (approximately $600 million).

The Infrastructure Act Requires That the Commission Undertake Specific Measures To Support the Goal of Equal Access

22. In addition to providing funding for broadband deployment in unserved and underserved communities, the Infrastructure Act sets out specified measures for the Commission in service of the goal that ''every American ha[ve] access to reliable high-speed internet.'' Title I directs the Commission to create a broadband funding map, which is an ''online mapping tool to provide a

locations overview of the overall geographic footprint of each broadband infrastructure deployment project funding by the Federal Government.'' Through this map, and the National Broadband Map, the Commission and other governmental and non-governmental stakeholders can track broadband deployment projects to ensure that broadband is deployed in historically unserved and underserved areas. Title V, entitled ''Broadband Affordability,'' addresses affordability of broadband internet for low-income consumers. In addition to expanding funding to offset the cost of broadband internet for low-income households through the Affordable Connectivity Program (ACP), Title V promotes transparency by requiring the Commission to adopt rules for broadband providers to display easy-to-understand labels that allow consumers to comparison shop for broadband services. This promotes competition by providing consumers clear, concise, and accurate information about broadband internet prices and fees, performance, and network practices.

23. Most relevant here, section 60506 of the Infrastructure Act sets out further measures to support the fundamental objective of ensuring equal access to broadband. The Statement of Policy provides that ''insofar as technically and economically feasible'' the Commission ''should take steps to ensure that all people of the United States benefit from equal access to broadband internet access service.'' In addition to mandating the adoption of rules to facilitate equal access by ''preventing digital discrimination of access'' on specified bases and identifying necessary steps to eliminate such discrimination, matters we discuss in great depth throughout this *Report and Order,* section 60506 requires the Commission and the Attorney General to ''ensure that Federal policies promote equal access to robust broadband internet access service by prohibiting deployment discrimination'' on specified bases. The Commission must also ''develop model policies and best practices that can be adopted by States and localities to ensure that broadband internet access service providers do not engage in digital discrimination,'' and revise its ''public complaint process to accept complaints from consumers or other members of the public that relate to digital discrimination.''

Commission's Actions To Further Promote Equal Access

Commission Funding Programs

24. The Commission's most recent efforts to get marginalized communities connected to high-quality broadband internet access service include administration of well-targeted subsidy programs. The Affordable Connectivity Program and its predecessor, the Emergency Broadband Benefit (EBB) Program, have been instrumental in helping low-income households afford broadband internet. Under the program, eligible low-income households can receive a discount of $30 per month toward internet service and up to $75 per month for eligible households on qualifying Tribal lands. Eligible households can also receive a one-time discount of up to $100 to purchase a laptop, desktop computer, or tablet from participating providers. As of August 2023, more than 20 million households in the United States have enrolled in the program.

25. During the pandemic, the Commission expedited adoption of the Emergency Connectivity Fund (ECF) and COVID–19 Telehealth Programs to provide funding to eligible schools and libraries for broadband services and connected devices for use by students, school staff, or library patrons and health care providers for telecommunications services, information services, and connected devices.

Communications Equity and Diversity Council

26. On June 29, 2021, the Commission chartered the Communications Equity and Diversity Council (CEDC), a federal advisory committee created for the purpose of presenting recommendations to the Commission on ''advancing equity in the provision of and access to digital communication services and products for all people of the United States, without discrimination on the basis of race, color, religion, national origin, sex, or disability.'' In chartering the CEDC, the Commission renewed the charter of the Advisory Committee on Diversity and Digital Empowerment under a new name. Within the CEDC is the Digital Empowerment and Inclusion Working Group that was tasked with recommending ''model policies and best practices that can be adopted by States and localities to ensure that broadband internet access service providers do not engage in digital discrimination'' as required by section 60506(d).

27. Since its formation, the CEDC and its working groups have taken significant steps towards satisfying its mission. On November 7, 2022, the CEDC submitted Recommendations and Best Practices to Prevent Digital Discrimination and Promote Digital Equity to the Commission. The CEDC found that ''COVID–19 exacerbated economic disparities for those who did not already have access to broadband services, especially in communities of color, where a lack of broadband access can reinforce systemic inequality. The CEDC further found that data supported the conclusion that minority status and income correlated with broadband access. To that end, the CEDC compiled findings from its three CEDC Working Groups and proposed recommendations for, among other things, model policies and best practices for states and localities that address discrimination in broadband access.

28. Moreover, in furtherance of its mission, on March 23, 2023, the CEDC convened a range of community organizations, broadband internet access providers, federal agencies with emergency broadband funding, and state agencies to assess lessons learned concerning programs that provided broadband connectivity to communities during the pandemic. The CEDC released recommendations on this topic on June 15, 2023.

Task Force To Prevent Digital Discrimination

29. Force to Prevent Digital Discrimination (Task Force). The Task Force is charged with coordinating the development of rules and policies to combat digital discrimination and promote equal access to broadband, overseeing the development of model state and local policies, and improving how the Commission seeks feedback from persons facing digital discrimination in their communities.

30. The Task Force has engaged in significant outreach nationwide to understand the depth of problems in accessing broadband, particularly as experienced by persons in historically excluded, low-income, rural, and marginalized communities. On January 25, 2023, the Task Force released a Broadband Access Experience Form for consumers to state their experience with accessing broadband internet. The Task Force explained that the experiences shared by consumers help inform the work of the Commission. Further, the Task Force has held numerous public listening sessions to gain additional information and understanding from affected communities, state, local and Tribal governments, public interest advocates, and providers about challenges, barriers, and experiences with accessing broadband. In addition,

the Task Force conducted outreach efforts to educate the public on the Commission's rulemaking procedure, and to gather data, narratives, best practices, and recommendations. Summaries of these listening sessions and meetings have been entered into the record in this proceeding.

Notice of Inquiry and Notice of Proposed Rulemaking

31. The Commission has taken iterative steps to form a robust record for the rules adopted in today's *Report and Order*. In March 2022, the Commission released a *Notice of Inquiry* seeking comment on the rules that the Commission should adopt to implement section 60506. By the *Notice of Inquiry,* the Commission invited comment on the requirements encompassed in section 60506, in order to inform a forthcoming rulemaking to implement the requirements of the statute.

32. In December 2022, the Commission released a *Notice of Proposed Rulemaking* (*NPRM*) seeking focused comment on potential rules to address digital discrimination of access pursuant to section 60506. The Commission sought comments on its proposals to: (1) adopt a definition of ''digital discrimination of access,'' (2) revise the Commission's informal consumer complaint process to accept complaints of digital discrimination of access, and (3) adopt model policies and best practices for states and localities combatting digital discrimination of access. The Commission also sought comment on other rules the Commission should adopt to facilitate equal access and combat digital discrimination of access, and on the legal authority for adopting rules. The Commission received more than 1,400 pages of record comments and ex partes from a wide range of stakeholders including public interest organizations, broadband internet access providers, state, local and Tribal governments, industry advocacy organizations, and research institutes. Informed by this record, we adopt rules in fulfillment of our mandate from Congress in section 60506 of the Infrastructure Act.

Discussion

33. Based on our review of the record received in response to the *Notice of Inquiry* and *NPRM,* we adopt rules in this *Report and Order* to implement subsections (b), (d) and (e) of section 60506. First, we adopt a definition of ''digital discrimination of access'' and explain its component parts. Next, we adopt rules to prohibit digital discrimination of access. Third, we outline the scope of that prohibition, identifying the consumers, entities, and services covered by the prohibition. Fourth, we adopt rules for enforcing the prohibition and other requirements set forth in our rules, and we explain how we will assess when a policy or practice differentially affects consumer access to broadband internet access service. Finally, we adopt changes to our informal complaints process so the Commission can accept digital discrimination of access complaints, address other issues on the record, and adopt model policies and best practices for states and localities combating digital discrimination.

Definition of Statutory Terms

34. Section 60506 is part of a comprehensive broadband access and affordability framework intended to expand broadband coverage in the United States, improve the quality of broadband services, and increase broadband adoption rates in low-income communities. As many commenters note, the bulk of the Infrastructure Act's broadband-related provisions are directed toward (1) improving broadband access in unserved and underserved communities by incentivizing investment in hard-to-build areas (principally through tens of billions of dollars in federally administered grants), and (2) improving broadband adoption rates in low-income communities through subsidies to qualifying consumers for high-speed broadband service and related equipment.

35. The Infrastructure Act's historic investment incentives represent an acknowledgement by Congress that: (1) deploying, upgrading, and maintaining high-speed broadband networks is an expensive enterprise, even for the largest of broadband providers, (2) networks will only be built where they can be deployed at acceptable cost and then profitably operated, and (3) such legitimate, profit and loss considerations likely account for many of the gaps in access to high-speed broadband service across the United States. The investment incentives in the Infrastructure Act directly address the very real technical and economic constraints facing many broadband providers as they work to expand their networks to reach unserved and underserved communities across the country.

36. But even while seeking to address these legitimate business constraints, Congress recognized that other factors might also have played a significant role in creating and maintaining the digital divide in the United States. Thus, alongside the ambitious programs in the Infrastructure Act for improving broadband access in unserved and underserved communities, Congress, in section 60506, specifically directed the Commission to facilitate equal access to broadband service, including addressing discrimination in the provision of access to broadband service.

37. Section 60506(a) first declares ''the policy of the United States that, insofar as technically and economically feasible . . . subscribers should benefit from equal access to broadband internet access service within the service area of a provider of such service . . . [and that] the Commission should take steps to ensure that all people of the United States benefit from equal access to broadband internet access service.'' Section 60506(b) then directs the Commission to ''adopt final rules to facilitate equal access to broadband internet access service, taking into account the issues of technical and economic feasibility presented by that objective,'' and mandates that those rules include ''preventing digital discrimination of access based on income level, race, ethnicity, color, religion, or national origin'' and ''identifying necessary steps for the Commission[ ] to take to eliminate'' such digital discrimination of access.

38. Critically important to our understanding of the reach of section 60506 is its definition of ''equal access.'' Section 60506(a) declares in the Statement of Policy that the Commission should take steps to ensure ''equal access'' to broadband internet access service across our Nation, and section 60506(b) directs the Commission to adopt rules to ''facilitate equal access'' to broadband internet access service. The ''equal access'' that we are to ensure and facilitate is defined in subsection (a)(2) as ''the *equal opportunity* to subscribe to an offered service that provides comparable speeds, capacities, latency, and other quality of service metrics in a given area, for comparable terms and conditions.'' The statute thus focuses the Commission's energies on the objective of *equal opportunity,* a concept and goal that is well known in American life. And in service of this equal opportunity goal, the Commission is directed, and thereby authorized, to adopt rules to prevent discrimination on the listed bases and to identify ways to eliminate its occurrence and effects.

Digital Discrimination of Access Defined

39. By enacting section 60506, Congress vested the Commission with authority to adopt and enforce rules to address the problem of digital discrimination of access. To achieve

that purpose, the *Notice* advanced proposals for defining ''digital discrimination of access'' and the legal standard for determining a violation of the rules. We adopt the following definition of ''digital discrimination of access,'' which is essentially identical to our proposal in the *Notice:* Policies or practices, not justified by genuine issues of technical or economic feasibility, that (1) differentially impact consumers' access to broadband internet access service based on their income level, race, ethnicity, color, religion, or national origin or (2) are intended to have such differential impact.

40. In so defining ''digital discrimination of access,'' we find that to achieve the statute's equal access purposes, the legal standard must address not only business conduct motivated by discriminatory intent, but also business conduct having discriminatory effects.

41. Virtually all commenters agree that digital discrimination of access encompasses business conduct motivated by discriminatory intent. Certainly treating a person or a group of persons ''less favorably than others because of a protected trait'' is ''the most easily understood type of discrimination.'' Under our adopted rules, business conduct motivated *by discrimination* on one of the six listed bases (income level, race, color, ethnicity, religion, and national origin) would generally be prohibited.

42. The disagreement among commenters centers on whether policies and practices having discriminatory *effects* should be prohibited under our definition of digital discrimination of access. Most industry commenters argue that the definition must be limited to disparate treatment, *i.e.,* intentional discrimination, relying largely on case law interpreting the Fair Housing Act (FHA) and asserting that a Commission rule permitting claims based on disparate impact, *i.e.,* discriminatory effect, would conflict with other provisions of the Infrastructure Act, and could disincentivize investment in broadband networks. On the other hand, most public interest and government commenters, relying on the same case law, argue that the rule must encompass disparate impact claims because most discrimination in broadband access stems from business practices having discriminatory effect, and any rule that excludes a disparate impact liability standard would render section 60506 largely meaningless. In adopting a definition of digital discrimination of access that encompasses both disparate treatment and disparate impact, we are guided primarily by the text of the statute, including its expressly stated goal of ensuring ''equal access'' to broadband internet access service.

Section 60506 Supports the Commission's Adoption of the Legal Standards Stated in the Defined Term

43. Statutory interpretation focuses on ''the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.'' The text and context of section 60506 of the Infrastructure Act fully support our adopted definition of digital discrimination of access and its application, as does the overall framework of the Infrastructure Act and section 60506.

Disparate Treatment

44. Section 60506 plainly addresses intentional discrimination, *i.e.,* an intentional act that treats a person, or group of persons, ''less favorably than others because of a protected trait.'' Virtually all commenters agree on this point, and we find no basis for disagreeing with this consensus view. Our definition of ''digital discrimination of access'' thus includes any act by a covered entity that is intended to differentially impact access to broadband internet access service on one of the listed bases and is not justified by genuine issues of technical or economic feasibility. Based on the record before us, we do not expect to encounter many instances of intentional discrimination with respect to deployment and network upgrades, as there is little or no evidence in the legislative history of section 60506 or the record of this proceeding indicating that intentional discrimination by industry participants based on the listed characteristics substantially contributes to disparities in access to broadband internet service across the Nation. Moreover, in the cases in which we do encounter intentional discrimination, we believe the entity that engaged in the discriminatory conduct will be hard pressed to justify such conduct on technical or economic feasibility grounds. Therefore, while we will allow such justifications to be raised and will consider them on a case-by-case basis, we expect that in most cases, a determination that a covered entity engaged in intentional discrimination will lead to a finding of liability under our rules.

Disparate Impact

45. In determining whether section 60506 authorizes us to include disparate impact in our definition of digital discrimination of access, we look to the guidance provided in the Supreme Court's decision in *Texas Department of Housing and Comm'ty Affairs* v. *Inclusive Communities Project,* 576 U.S. 519, 533 (2015) (*Inclusive Communities*). There, the Court set out a framework for determining when an antidiscrimination statute ''must be construed to encompass disparate impact claims.'' Under that framework, a disparate impact legal standard is authorized where the statutory text is ''results based'' and such a standard is ''consistent with statutory purpose.'' And, where evidence of a statistical disparity is shown to support a complaint of disparate impact, liability is properly limited where (1) the challenged policy or practice is shown to cause the disparity complained about, and (2) business owners are permitted to explain the valid interests served by the challenged policy or practice. We find that 60506 authorizes a disparate impact liability standard and that our implementing rules, outlined below, fully comport with the limiting criteria set out in *Inclusive Communities.*

Statutory Text and Context

46. The language of section 60506 falls within Division F (Broadband Access) of the Infrastructure Act, where Congress addresses the problem of the ''digital divide'' in our country and the urgency of corrective action because ''[a]ccess to affordable, reliable, high-speed broadband is essential to full participation in modern life in the United States.'' The term ''equal access'' is defined in section 60506 as ''the equal opportunity to subscribe to an offered service'' of comparable quality on comparable terms and conditions. The term ''equal access'' lies at the center of section 60506's Statement of Policy in subsection (a). At subsection (b) Congress directs the Commission to adopt final rules to ''facilitate equal access'' which includes ''preventing digital discrimination'' and ''identifying necessary steps . . . to eliminate [such] discrimination.'' As we explain below, the facial text, context and purposes of the statute establish Congress's intent that our implementing rules address conduct having discriminatory effects as well as conduct motivated by discriminatory intent.

47. The operative text mandates the adoption of rules to ''facilitate equal access to broadband'' which includes ''preventing digital discrimination of access based on'' specified characteristics, and ''identifying necessary steps . . . to eliminate [such] discrimination.'' The term ''equal access'' is defined in section 60506(a) as ''the *equal opportunity* to subscribe to an offered service'' of comparable

quality on comparable terms and conditions and lies at the center of section 60506's Statement of Policy. We reject the argument that section 60506(a)(2) ''is irrelevant to the meaning of 'discrimination''' even if it focuses on consequence. As explained, we interpret ''of access'' in subsection (b)(1) to incorporate the definition of ''equal access'' in (a)(2). At subsection (b), Congress directs the Commission to adopt final rules to ''facilitate equal access'' to broadband internet access service. Like Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act, section 60506 defines ''access'' in terms of opportunity. Because the statute defines ''access'' as the ''*opportunity* to subscribe,'' this operative text focuses on the impact of a policy or practice on the consumer's chance or right to obtain service rather than intent.

48. Courts commonly look to the ''ordinary meaning'' of a statute's words to interpret their meaning when the statute itself does not provide a definition. Looking at other operative text of section 60506, given its ordinary meaning, we find that each term targets the ''consequences of actions.'' For undefined statutory terms, courts can look to the ''dictionary for clarification of the plain meaning of words selected by Congress.'' For instance, subsection (a)(1) of the statute focuses on the ''opportunity'' to subscribe [1] and subsection (a)(3) states that consumers should ''benefit'' from equal access to broadband. The plain meaning of ''opportunity'' is ''a good chance for advancement or progress,'' and ''benefit'' means ''to receive help or an advantage.'' Neither term depends on the mindset of the actor, but rather the effect of the action. Section 60506(b), moreover, directs the Commission to ''facilitate'' equal access by ''preventing'' digital discrimination of access, and identifying necessary steps to ''eliminate'' it. The plain meaning of ''facilitate'' is ''to make easier or help bring about.'' The meaning of ''prevent'' as referenced in subsection (b)(1) is ''keep[ing] (something) from happening or arising,'' and ''eliminate'' as referenced in subsection(b)(2) means to ''put an end to or get rid of.'' Commenters urge us to adopt a disparate impact legal standard due to the documented disparities in broadband access nationwide. Again, these definitions, taken from the Merriam-Webster's (online) Dictionary, clearly suggest an effects-based orientation—whether looking at each word independently or in context as written in the statute—rather than a singular focus on the mindset of the actor. Equal access can be denied by policies and practices having discriminatory effects even where no discriminatory motive is present, and it is our considered view that most of the gaps in access to broadband internet service in our country, to the extent that they are not a product of legitimate business constraints that Congress sought to address in other provisions of the Infrastructure Act, stem from policies and practices that are neutral on their face, rather than from intentionally discriminatory conduct on the part of covered entities and other industry participants. Further, the use of the words ''based on'' in section 60506(b)(1) does not limit its reach to instances of intentional discrimination under controlling precedent. Some commenters argue that the statute's use of the term ''based on'' limits the statute to an intent-only legal standard. This argument by commenters has already been expressly rejected by the Supreme Court in *Griggs* v. *Duke Power Co.,* 401 U.S. 424 (1971) (*Griggs*) and its progeny. Looking at the other nondiscrimination statutes that contain similar ''based on'' language—section 703(a)(2) of Title VII, section 4(a)(2) of the ADEA, and section 804(a) of the FHA—each of these statutes were found by the Court to authorize disparate impact claims because of the results-based statutory language. Just as with these antidiscrimination statutes, section 60506's ''based on'' text does not foreclose utilizing a disparate impact legal standard. The disparate impact standard is authorized by section 60506, as it is drawn from the ''equal access'' and other ''results-based'' statutory language and clear purposes of the statute.

49. In reaching this conclusion, we are mindful of the history of disparate impact analysis as it applies to federal anti-discrimination statutes. It was first addressed in *Griggs.* where the Supreme Court interpreted section 703(a)(2) of Title VII of the Civil Rights Act to authorize disparate impact liability. Section 703(a)(2) of Title VII made it ''an unlawful practice for an employer'' to ''limit, segregate, or classify . . . employees or applicants for employment in any way which would deprive any individual of employment opportunities *or otherwise adversely affect* his status as an employee because of such individual's race, color, religion, sex or national origin.'' There, the Court interpreted the statutory text to prohibit not only ''overt discrimination'' but also ''practices that are fair in form, but discriminatory in operation.'' Further, the Court stated that ''[u]nder [Title VII], practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to 'freeze' the status quo of prior discriminatory employment practices.'' The Court reasoned that from this language ''Congress directed the thrust of [Sec. 703(a)(2)] to the consequences of employment practices, not simply the motivation.'' Notably, the Court stated that the statute's goal of achieving ''*equality of employment opportunities* and remov[ing] barriers that have operated in the past'' to favor some individuals over others afforded protected status must be interpreted to allow disparate impact claims. Section 4(a)(2) of the Age Discrimination in Employment Act (ADEA) contains similar language as that of Title VII, and a plurality of the Court in *Smith* v. *City of Jackson,* 544 US 228 (2005) (*Smith*), ruled that the statutory text authorized disparate impact liability just as it did in *Griggs.*

50. Similar reasoning was employed in examining section 804(a) of the FHA by the Court in *Inclusive Communities,* even though the provision used different results-based language than did Title VII and the ADEA. The FHA makes it unlawful to ''refuse to sell or rent . . . or otherwise make unavailable or deny, a dwelling to any person because of'' a protected status. The Court in *Inclusive Communities* observed ''the logic of *Griggs* and *Smith* provides strong support for the conclusion that the FHA encompasses disparate-impact claims'' even though the results-oriented language was different. The Court observed that ''[i]t is true that Congress did not reiterate Title VII's exact language in the FHA, but that is because to do so would have made the relevant sentence awkward and unclear.'' So, instead, ''Congress thus chose words that serve the same purpose and bear the same basic meaning but are consistent with the structure and objectives of the FHA.'' Likewise, in the context of section 60506, Congress did not repeat the results-based language that appears in Title VII, the ADEA, the FHA or the many other federal anti-discrimination statutes that have been determined to prohibit disparate impacts on specified bases. Title VI authorizes promulgation of disparate impact regulations. Instead, Congress chose words appropriate to the statute's purpose of promoting equal access to broadband internet service; the statute appropriately references ''equal access,'' ''equal opportunity'' and other terminology that goes to results or

[1] 47 U.S.C. 1754(a)(1).

consequences of actions (or counteracting those results or consequences), and not to the mindset of actors. For these reasons, we disagree with commenters who argue that section 60506 does not have results-oriented language or other textual markers that authorize disparate impact liability.

Statutory Purpose

51. Our reading of the statutory text to encompass disparate impact aligns with the overall scheme of the Infrastructure Act, and with the purpose of section 60506 specifically. As described above, promoting broadband internet access has been a longstanding policy objective for the Commission. The 1996 Act expanded the goal of universal service to include advanced services such as broadband internet service, and the Commission used its universal funding programs to address the persistent digital divide. Then, in 2020, the global COVID–19 pandemic necessitated social distancing that made the ongoing digital divide even more evident and troublesome. Some commenters in this proceeding argue, directly or indirectly, that ''digital discrimination'' does not exist. But those arguments are belied by Congress's findings in the Infrastructure Act and the record compiled in this proceeding correlating the digital divide with historical discrimination. In all events, Congress has directed the Commission to take swift action to prevent digital discrimination of access. Therefore, we do not find it necessary to evaluate claims by commenters that digital discrimination of access does not exist. Such arguments would more appropriately have been made to Congress when it was considering this legislation. We have neither the authority, nor the inclination, to question the factual bases for Congress's directives to the Commission. Indeed, section 60506 aligns with the Commission's longstanding obligation to promote nondiscrimination in the telecommunications sector. Section 202(a) of the Communications Act is a nondiscrimination provision that makes it unlawful for common carriers to ''discriminat[e] in charges, practices, classifications, regulations, facilities, or services for or in connection with like communications service . . . or to . . . . advantage . . . any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.'' It requires no showing of discriminatory intent to establish a violation. Under section 202, where ''like communications services'' are provided by the same provider but on different terms or conditions, the provider must justify any difference as reasonable.

52. Gaps in access to high-quality broadband across the country led Congress to enact the broadband-related provisions of the Infrastructure Act, which creates historic investment incentives and affordability subsidies to address some of the causes of the digital divide. The Infrastructure Act also clearly mandates certain prophylactic measures to address discriminatory conduct that is not addressed elsewhere in the legislation. For the past half century, our country's civil rights jurisprudence has recognized that equal opportunity to achieve economic and social benefits can be denied intentionally because of the personal characteristics or status of the person seeking the opportunity or benefit, or it can be denied unintentionally because of facially neutral policies or practices that disproportionately exclude persons possessing such characteristics or status, and both types of denial are unlawful. Disparate impact analysis has maintained its foundational standing in the courts, most recently in *Inclusive Communities,* as a means for addressing harm caused by policies or practices that have discriminatory effects and lack adequate business justification. We find that by defining the goals of section 60506 in terms of ''equal access'' and ''equal opportunity,'' especially in light of the 52-year history of disparate impact analysis in civil rights law, Congress expressed its intention that the Commission's implementing regulations address business conduct having the effect of denying designated groups of consumers the equal opportunity to subscribe to an offered broadband service, regardless of the motivation for such actions.

53. As further support for the Congressional purpose that drives our actions today, the record in this proceeding contains substantial evidence of gaps in access among persons in some low-income, rural, Tribal, and minority communities. As noted above, there is little or no evidence in the legislative history of the Infrastructure Act or the record of this proceeding that impediments to broadband internet access service are the result of intentional discrimination based on the criteria set forth in the statute. Rather, we must conclude that such impediments are more likely driven by neutral policies or practices (*i.e.,* business decisions) that have discriminatory effects.

Section 60506 Properly Limits Disparate Impact Liability

54. Even where a statute contains ''results-based'' text that authorizes disparate impact claims, the liability standard must require a showing that a challenged policy or practice is causing the disparity complained about, and ''avoid displacement of legitimate practices.'' Both of these factors are met by the rules we adopt today.

55. First, we will require that any determination of differential impact that relies on observed disparity must point to a specific policy or practice that is causing the disparity. A ''robust causality requirement'' ensures that any statistical imbalance does not alone establish liability and thus protects covered entities ''from being held liable for . . . disparities they did not create.'' We therefore require that any determination of liability under our rules that is founded on statistical disparity must include a determination that the disparity is caused by a specific policy or practice of the covered entity under investigation.

56. Next, the rules will give covered entities an opportunity to present justifications for discriminatory policies and practices. Section 60506 sets out such limitation by requiring that our rules facilitate equal access while taking into account ''issues of technical and economic feasibility.'' Where the Commission believes there is credible evidence that a covered entity's policy or practice differentially impacts access to broadband internet access service on the basis of income level, race, ethnicity, color, religion, or national origin, the covered entity will have the opportunity to prove that the policy or practice is nevertheless ''justified by genuine issues of technical or economic feasibility.'' We anticipate that such justification will include proof that there is not a reasonably available and achievable alternative policy or practice that would serve the entity's legitimate business objectives with less discriminatory effect. In this *Report and Order,* we explain the meaning of these terms, and how they will be applied on a case-by-case basis in the context of our self-initiated investigations of digital discrimination of access complaints.

Adopting a Rule That Encompasses Disparate Impact Claims Does Not Conflict With the Infrastructure Act's Funding Programs and Will Not Chill Broadband Investment

57. Contrary to some commenters' claims, including disparate impact in our definition of digital discrimination of access does not conflict with the

broadband funding programs set out in the Infrastructure Act and will not otherwise chill investment in broadband networks. The deployment and digital equity funds provided for in the Infrastructure Act prioritize unserved and underserved areas by addressing technical and economic issues that have hindered investment in ''hard-to-build'' areas. By contrast, section 60506 and the Commission's implementing rules are centered on conduct that does not stem from such issues. Our definition of ''digital discrimination of access'' highlights this contrast by specifically exempting policies and practices that are justified by ''genuine issues of technical and economic feasibility.'' Thus, the discrimination addressed in section 60506 and our implementing rules is not addressed in other provisions of the statute, and vice versa. There is no conflict.

58. Nor do we believe that including disparate impact in our definition of digital discrimination of access will chill investments in broadband networks. Congress has provided historic funding incentives aimed to spur broadband investments in unserved and underserved communities throughout the United States. Those incentives, once again, address the very real technical and economic challenges that have hindered deployment, upgrades, and maintenance of networks in those communities. We are not persuaded that adoption of a disparate impact standard will disincentivize economic investments in networks out of fear that doing so might somehow require uneconomic investments. Again, we emphasize that under the rules we adopt today, there can be no liability determination for disparate impact unless (1) there is a differential in access to broadband service; (2) the differential is caused by a specific policy or practice of the covered entity; and (3) the covered entity fails to prove that the policy or practice is justified on genuine technical or economic grounds. When providing broadband access to a particular area is impeded by genuine issues of technical or economic feasibility, the covered entity should be able to explain those issues and offer substantial evidence to support them. While our rules will require greater diligence by covered entities in determining and documenting the reasons for access gaps in their service areas, we do not think that result is overly burdensome in furtherance of the statutory goal of equal access, nor do we think it will disincentivize investment in broadband networks.

Other Considerations

59. Having reached the central determinations for adopting a definition of digital discrimination of access and the applicable legal standards, we respond to other considerations commenters raise. Commenters raise additional arguments regarding interpretation of ''equal access,'' legislative history, and the role that a covered entity's profitability and access to consumer data should play in our definition of digital discrimination of access analysis. We address each of those considerations in turn.

60. *Interpretation of ''equal access.''* Commenters urge us to interpret ''equal access'' to require a showing of intent. Given that ''equal access'' is defined by statute, is inherently ''results based,'' and is coupled with other operative terms that are ''results based,'' we must reject each of these proposals. Some commenters argue that the intent legal standard should apply specifically to digital discrimination of access claims that pertain to the characteristics of particular technologies. We find no basis for adopting different legal standards for specific technologies because the rules we adopt today are sufficiently flexible to accommodate all technologies through which broadband internet access service is provided. Certainly, requiring any showing of intent would conflict with our reasoned interpretation of the statutory text and purpose. Commenters disagree as to whether language in recent telecommunications laws explicitly referencing intent is relevant. Given the disagreement on the record and that section 60506's statutory text authorizes a legal standard showing for discriminatory effect, we are not persuaded that we should adopt an intent-only legal standard. We likewise decline the City of Long Beach's suggestion that we ''should seek to achieve and facilitate *equitable* access[ ] rather than equal access,'' because that interpretation would directly conflict with the Statement of Policy. We also reject TechFreedom's proposal to give a fluid meaning to ''equal access'' that would vary from the definition in the statute. In particular, TechFreedom argues that the word ''access'' in section 60506(b)(1) ''has a purely technical meaning: it is the technological 'capability to transmit [. . .] and receive data' enjoyed by the user.'' We disagree. Because ''preventing digital discrimination of access'' is included within the broader mandate of rules to ''facilitate equal access,'' the word ''access'' in the phrase ''preventing digital discrimination of access'' incorporates the statutory definition of ''equal access.'' Congress defined ''equal access'' as ''the equal opportunity to subscribe'' to broadband. Thus, ''digital discrimination of access'' is best understood as referring to discrimination in the ''opportunity to subscribe.'' For those same reasons, we also disagree with commenters who argue that section 60506's operative text does not contain results-oriented language. As the term ''equal access'' is expressly defined in section 60506(a)(2) and ''access'' as used in section 60506 (b)(1) is a derivative of that definition, we find no basis or authority to deviate from the statutory text. Some commenters request that we give ''digital discrimination'' and ''digital discrimination of access'' the same meaning, or define only the term ''digital discrimination'' We decline to do so. We define and give meaning to ''digital discrimination of access'' because Congress charged the Commission with adopting rules that ''prevent[ ] digital discrimination of access'' in subsection (b), and defining that term in our rules better aligns with our mandate to ''facilitate equal access'' in this proceeding.

61. We also disagree with Lincoln Network's argument that the statute's reference to an ''opportunity'' to subscribe requires a disparate treatment standard. This interpretation ignores that a consumer's ''opportunity'' to subscribe could be impeded by policies and practices having discriminatory effects even where discriminatory intent is absent. Consequently, limiting our definition to conduct motivated by discriminatory intent would not fully accomplish our mandate from Congress to facilitate equal access to broadband service and prevent discrimination on the listed bases.

62. *Interpretation of legal standards.* We disagree with commenters who argue that the terms of section 60506 do not support including disparate impact in our definition of digital discrimination of access. AT&T argues that the phrase ''to facilitate equal access'' speaks only to the Commission's broader obligations to incentivize broadband deployment and does not support using disparate impact analysis to reach that objective. CTIA argues that Congress would not have used the term ''facilitate'' ''if it intended for the Commission to create a burdensome liability and enforcement regime.'' As explained herein, the statutory text, context, and purposes of the Infrastructure Act and section 60506 make clear that Congress intended that our rules addressing digital discrimination of access reach not only

discriminatory treatment, but also policies and practices having discriminatory effect. By commenters' own admission, there is little to no evidence of intentional digital discrimination of access. The Commission is obligated to adhere to Congress's mandate and adopt rules that address the problems that do exist rather than those that do not.

63. *Legislative History.* Commenters argue that the sparse legislative history of section 60506 and/or the absence of a specific mention of disparate impact in the legislative history forecloses inclusion of a disparate impact liability standard. We disagree. As explained by this *Report and Order,* we conclude that the text, context, and purpose of the statute clearly authorize that liability standard. USTelecom argues, however, that Title VII of the Civil Rights Act, the FHA, and the ADEA were all grounded in a congressional record of ''specific, historic discrimination that the statute was designed to remedy and prevent'' and that history of discrimination in the legislative history supported a disparate impact liability standard. While the legislative history of section 60506 is not as robust as that of Title VII, the ADEA, and the FHA, the Supreme Court has made clear that even ''silence in the legislative history . . . cannot defeat the better reading of the text and statutory context. . . . If the text is clear, it needs no repetition in the legislative history; and if the text is ambiguous, silence in the legislative history cannot lend any clarity.'' As to section 60506, the text, statutory context, and purpose is clear. The statute's text and purpose, to promote equal access to broadband internet, fully authorize including a disparate impact liability standard for enforcing our prohibition against digital discrimination of access. Some commenters argue that our reading of section 60506 is foreclosed because disparate-impact liability would enable the Commission to regulate the rates of broadband internet access service providers, ''impose requirements to build-out service, and more.'' But the ''new regime of unfunded mandates and price regulation'' that these commenters posit has no foundation in the rules we adopt herein. We also note our agreement with the Lawyers' Committee that the major questions doctrine has no application to our implementation of section 60506.

64. *Profitability Considerations.* We additionally decline the suggestion in the policy paper submitted by the Americans For Tax Reform and Digital Liberty that we define digital discrimination of access ''[as] when differences in the deployment of and/or the quality, terms, and conditions of access to broadband services are not explained by differences in the profitability of serving the different areas, but instead reflect non-economic decisions to underserve protected classes in a manner that causes adverse or negative consequences.'' This definition would limit the Commission to considering ''profitability'' rather than ''issues of technical and economic feasibility,'' and would appear to place primary weight on economic rather than technical considerations. Our adopted rule properly includes both technical and economic considerations, as explained in this *Report and Order.*

65. *Data Access.* The LGBT Technology Partnership proposes that we adopt a definition of digital discrimination of access that encompasses data access concerns and issues pertaining to personal data that is processed by an algorithm. We decline to include that within the scope of our covered services. By LGBT Technology Partnership's own admission, section 60506 is ''not directly related to how emerging technologies like algorithms facilitate greater precision of structural discrimination.'' However, to the extent that such privacy- and data-related practices can be shown to differentially affect consumer access to broadband service on one or more of the listed bases, those practices might fall within the scope of our definition.

Technical and Economic Feasibility

66. Section 60506 twice references technical and economic feasibility. First, as noted above, Congress declared in section 60506(a)(1) the ''policy of the United States that, *insofar as technically and economically feasible* . . . subscribers should benefit from equal access to broadband internet access service within the service area of a provider of such service . . . .'' And in section 60506(b), Congress directed the Commission to ''adopt final rules to facilitate equal access to broadband internet access service, *taking into account the issues of technical and economic feasibility presented by that objective* . . . .''

67. These references are clear indicators that full achievement of the ''equal access'' and ''equal opportunity'' goals of the statute might, in some instances, be limited by genuine technical or economic constraints. If the technology does not yet exist to provide a particular broadband internet access service to a particular geographic area, or the technology to provide the service does exist but utilizing it to reach the area in question would be prohibitively expensive, the failure to provide that specific service to that specific area would be explained by genuine technical or economic constraints. In order to account for these types of circumstances, in our December 2022 *NPRM,* we proposed to define the term ''digital discrimination of access'' in section 60506(b)(1) such that any Commission determination that prohibited discrimination has occurred must be preceded by analysis of whether the policy or practice in question was ''justified by genuine issues of technical or economic feasibility.'' Having adopted a definition of ''digital discrimination of access'' that includes a specific carve out for conduct found to be so justified, we now adopt definitions for the terms ''technically feasible'' and ''economically feasible'' in the context of section 60506 and we explain how the Commission will evaluate ''genuine issues of technical or economic feasibility'' under our rules. We agree with commenters that our application of these concepts is critical to the successful implementation of section 60506.

Technical and Economic Feasibility Are Fundamental Components of Digital Discrimination of Access

68. We first find that including the carve out for technical and economic feasibility in our definition of ''digital discrimination of access'' is the soundest, most straightforward, and most effective means of satisfying our statutory responsibility to facilitate equal access while ''taking into account the issues of technical and economic feasibility presented by that objective.'' We disagree with those commenters that suggest we omit the carve out language or argue that it should only be considered as an affirmative defense if the Commission were to create a structured complaint process to receive allegations of digital discrimination of access. We are also not persuaded by the argument that feasibility should not be included in our definition because it is not included in subsections (b)(1), (d), or (e). The proffered construction misreads subsection (b), which places feasibility concerns squarely within each of the tasks assigned to the Commission under that subsection. We similarly decline USTelecom and WISPA's request that we omit the word ''genuine'' from the carve out. The record reflects widespread concern that naked assertions of technical or economic infeasibility could become a loophole to complying with our digital discrimination of access rules such that they would not actually ''facilitate equal access to broadband'' as Congress intended. We include the word

''genuine'' in our definition of digital discrimination of access to convey that bare assertions and justifications created after the fact will not suffice to prove that a business practice falls within the carve out and is therefore exempt from liability.

Consideration of Technical and Economic Feasibility Supports a Disparate Impact Approach

69. We further find that Congress's directive in section 60506(b) that we take into account issues of technical and economic feasibility supports including a disparate impact approach in our definition of ''digital discrimination of access'' and fits neatly into the framework of disparate impact analysis. Under traditional disparate impact analysis, once a policy or practice is shown to have a meaningful adverse impact on a protected group, the covered entity may affirmatively produce evidence that the challenged policy or practice is justified by a substantial, legitimate business interest. If the covered entity does so, it may still be liable if there is a less discriminatory alternative to the challenged policy or practice. Congress's directive that the Commission take into account issues of technical and economic feasibility represents a formulation of this traditional test as tailored to the specific context of section 60506 and the issues it aims to address. As further discussed above in the disparate impact paragraphs and below in the enforcement-related paragraphs, a covered entity in a Commission investigation under section 60506 will likewise have the opportunity to show that the policy or practice under scrutiny is justified by genuine technical or economic constraints. And as part of the Commission's consideration of these issues, a covered entity will be allowed to present for the Commission's review any legitimate business impediment to the use of less discriminatory alternatives. We find that the feasibility provision is largely superfluous to intentional discrimination of access, and that when Congress directed the Commission to be mindful of technical and economic considerations, its objective was to ensure that covered entities in any investigation the Commission conducts under our rules to prevent digital discrimination of access would have an opportunity to explain and justify their conduct.

70. We disagree with commenters asserting that the technical and economic feasibility language in section 60506 does not support inclusion of disparate impact in our definition of digital discrimination of access. These commenters fail to explain why consideration of technical and economic feasibility makes sense only in the context of disparate treatment claims or why it makes more sense in the context of disparate treatment claims than in the context of disparate impact claims.

71. We are also not persuaded by AT&T's argument that Congress's contemplation of technical and economic justifications for challenged practices does not support an inference that Congress intended to capture cases of disparate impact. AT&T argues that section 60506's feasibility provision has ''independent significance even if Congress intended the Commission to address only intentional discrimination'' because ''income levels are routinely used [ ] as a basis for business decisions in a wide variety of [] industries.'' But as the Lawyers' Committee for Civil Rights Under Law notes, ''there is still no scenario in which intentional discrimination on the basis of income level—or any other protected characteristic—could ever be justified by technical feasibility.'' We find that AT&T's reading ''is thus at odds with one of the most basic interpretive canons, that '[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant . . . .' '' And, as we have stated elsewhere, there is little or no evidence in the legislative history or in the record of this proceeding that intentional discrimination on *any* basis by industry participants contributes meaningfully to the digital divide in this country. AT&T also argues that the feasibility provision does not support the existence of disparate-impact liability under section 60506 because it ''applies to the broader mandate to the Commission to 'facilitate equal access' and is not restricted only to the narrower included 'discrimination' provision.'' In response, Lawyers' Committee for Civil Rights Under Law argues that, ''the feasibility qualifier must also apply to [(b)(1)] providing specific instructions on how the Commission needs to execute that preamble. AT&T does not explain how the 'preventing discrimination' provision—if interpreted to cover only intentional discrimination—would 'tak[e] into account technical and economic feasibility.' ''

Definitions of ''Technically Feasible'' and ''Economically Feasible''

72. As discussed in more detail below, we adopt clear definitions of the terms ''technically feasible'' and ''economically feasible'' based on the record in this proceeding and Commission precedent; and, we explain how the Commission will assess issues of technical or economic feasibility under section 60506(b). We interpret section 60506(b)'s reference to ''issues of technical and economic feasibility'' to mean issues of ''technical feasibility'' on the one hand, and issues of ''economic feasibility'' on the other. We understand subsection (a)'s use of ''technically and economically feasible'' and subsection (b)'s use of ''technical and economic feasibility'' to reference the same concepts. We define a ''technically feasible'' policy or practice to mean one that is ''reasonably achievable as evidenced by prior success by covered entities under similar circumstances or demonstrated technological advances clearly indicating that the policy or practice in question may reasonably be adopted, implemented, and utilized.'' Similarly, we define an ''economically feasible'' policy or practice to mean a policy or practice that is ''reasonably achievable as evidenced by prior success by covered entities under similar circumstances or demonstrated new economic conditions clearly indicating that the policy or practice in question may reasonably be adopted, implemented, and utilized.''

73. In the *NPRM,* we sought comment on how to define and incorporate into our rules the concepts of technical and economic feasibility as they are used in section 60506. We asked detailed questions on the merits and mechanisms of adopting various approaches, including safe harbors, case-by-case analyses, or a combination thereof. Because neither the statute nor the legislative history contain definitions of these terms, the Commission must adopt an interpretation that, taken in the context of the statute as a whole, best effectuates the goal of section 60506. Based on this touchstone, the record we received in response to the *NPRM,* and Commission precedent, we adopt definitions of these terms that balance the goal of facilitating equal access to broadband internet access services with the technical and economic challenges facing covered entities as they work to expand and improve their networks in unserved and underserved communities.

74. *Commission and Legal Precedent.* We adopt definitions of ''technical feasibility'' and ''economic feasibility'' that are consistent with the Commission's precedent. The Commission has previously interpreted, individually or as a pair, the concepts of technical and economic feasibility in connection to its implementation of various statutes. While the

Commission's previous interpretations and applications of these terms have varied by context, these instances provide guidance for our implementation of section 60506. For example, the Commission has previously made determinations as to whether an activity was technically and economically feasible based on record support or lack thereof, adopted a rebuttable presumption of technical feasibility based on prior findings by a state commission, adopted a list of activity that is technically feasible, and established a process to analyze feasibility issues on a case-by-case basis. Furthermore, the Commission has closely scrutinized technical and economic feasibility issues, relied on industry past practice and success as key indicators of technical feasibility, and placed the burden on the entity asserting technical or economic infeasibility to prove the claim to the Commission's satisfaction.

75. Judicial case law also informs our definitions of technical and economic feasibility for section 60506 purposes. In 2002, the Supreme Court decided a challenge to the Commission's implementation of section 251 of the Communications Act that involved the Commission's interpretations of the statutory phrase ''technically feasible.'' Petitioners in that case argued that Commission rules requiring incumbent carriers to combine unbundled network elements where ''technically feasible'' was unreasonable and in conflict with the statutory language. In upholding the Commission's rules, the Court rejected the petitioners' argument that the rules imposed no reasonable limits on the requirement to combine network elements. Rather, the Court held that the Commission's definition of ''technically feasible'' provided real limits on what would be required of incumbent local exchange carriers, concluding that ''[i]f 'technically feasible' meant what is merely possible, it would have been no limitation at all.'' The Court's ruling, albeit in a different context, instructs that we should be skeptical of arguments suggesting that technical and economic feasibility are concepts operating at the margins of what is technical and economically *convenient* on the one hand, or what is technically and economically *possible* on the other.

76. *Technical Feasibility.* Taking into account long-standing Commission precedent, we define a ''technically feasible'' policy or practice as one that is ''reasonably achievable as evidenced by prior success by covered entities under similar circumstances or demonstrated technological advances clearly indicating that the policy or practice in question may reasonably be adopted, implemented, and utilized.'' We use the Commission's definition of ''technically feasible'' from § 54.5 of the Commission's rules as a starting point. When implementing the interconnection provisions of the 1996 Act, the Commission similarly leveraged prior successful practice to identify and define technical feasibility. In that context, the Commission adopted rules that established previous points of interconnection or methods of access to unbundled network elements as ''substantial evidence'' that analogous points or methods are technically feasible. In the context of section 60506, a policy or practice will be considered technically feasible if it is reasonably achievable, as evidenced by prior success under similar circumstances. Moreover, because technological advances might provide ready means of achieving successful outcomes that have not occurred in the past, we will allow for the possibility that technical feasibility may be shown by ''demonstrated technological advances clearly indicating the reasonable achievability'' of the policy or practice in question.

77. *Economic Feasibility.* We define an ''economically feasible'' policy or practice to mean one that is ''reasonably achievable as evidenced by prior success by covered entities under similar circumstances or demonstrated new economic conditions clearly indicating that the policy or practice in question may reasonably be adopted, implemented, and utilized.'' We again use the language of the Commission's definition of ''technically feasible'' in § 54.5 as a baseline because anchoring economic feasibility in past industry practice will provide guidance to allow all interested stakeholders to gauge what is or is not economically feasible. Factors for analyzing economic feasibility of a policy or practice include, but are not limited to, projected income, projected expenses, net income, expected return on investment, competition, cash flow, market trends, and working capital requirements, and the standards under which such calculations are determined. A policy or practice will be considered economically feasible if relevant economic variables fall within acceptable ranges based on past industry practice. Determining economic feasibility thus requires a comparative analysis that accounts for past and present industry practices and new economic conditions that might, in some circumstances, require variances from such historical ranges.

78. Our definitions of ''technically feasible'' and ''economically feasible'' join previous Commission interpretations of these terms with several important attributes specific to the present context. As a baseline, we interpret the categories of ''technical'' and ''economic'' feasibility broadly to encompass any legitimate business impediment to achievement of equal access. In addition to using prior successful policies and practices as the foundation for determining what is technically or economically feasible, we design our definitions to flexibly encompass future policies and practices and the inherent differences in the operation of covered entities of varying sizes and technologies. We also take a measured approach that considers the real burdens industry participants face in deploying and providing service, while also ensuring that we do not create ''a loophole that renders the rules meaningless.'' And lastly, we make clear that issues of technical and economic feasibility are related but ultimately distinct from each other.

79. We take a measured approach to defining these terms, providing guideposts for understanding what is technically or economically feasible today and what could be feasible in the future. We emphasize that we do not define technical and economic feasibility as simple deference to a single entity's judgment, as many industry commenters argue we should. We agree with those commenters asserting that Congress did not adopt section 60506 to enshrine the current industry status quo. When considering what is technically or economically feasible, we expect covered entities to consider more than just what is the most convenient. For example, the Commission found in other contexts that the novelty or costliness of a particular business path does not, in itself, answer the question of whether that path is feasible, nor does the difficulty of a change in product design. At the same time, we do not create an ''impossibility'' standard as some commenters have warned against, which would define any action as technically or economically feasible unless it was impossible. Like the Commission's approach to defining ''technically feasible'' in the *First Local Competition Order,* 61 FR 45476, the definitions we adopt today include reasonable limitations on what is considered technically or economically feasible and do not represent any attempt to ''control'' covered entities' investment decisions. Complying with the rules we adopt today does not

displace the ability of industry participants to make ''practical business choices and profit-related decisions.'' Rather, they are designed to ensure that industry participants incorporate into their decision-making processes consideration of the potential discriminatory impacts of their policies and practices, and that they seek to minimize any such discriminatory impacts.

80. We acknowledge that the technical and economic challenges that covered entities face in deploying and serving rural, Tribal, and urban areas can vary greatly. At the same time, we agree with Public Knowledge et al. that ''broadband deployment may still be feasible in areas even where there are no similar circumstances to use as a benchmark,'' and if feasibility ''was limited to circumstances where there is a direct analog, certain areas that have gone long underserved due to unique characteristics might continue to fall through the cracks.'' Thus, we intend for our approach to technical and economic feasibility to encompass new, but analogous, policies and practices to account for variations among covered entity types and industry advancement. The Commission has previously crafted a definition of technical feasibility to outlast current technological development in the context of certain unbundling obligations for incumbent local exchange providers. Under those rules, the Commission adopted a rebuttable presumption that once one state had determined an approach was technically feasible, the same approach would be presumed to be technically feasible for incumbent local exchange carriers in every state. We decline at this time to adopt a presumption of feasibility, and therefore do not take the precise approach taken by the Commission in 1999. But we do find that we are similarly defining our concepts of technical and economic feasibility to allow for consideration of technical, infrastructure, economic, or other developments in the area under review. We also decline at this time to adopt any explicitly different standard for evaluating claims of economic feasibility for existing service offerings versus new deployments.

81. While our definitions of technical and economic feasibility mirror each other, and in certain respects might be related, we consider each to be a distinct concept. The Commission has taken this approach previously, and commenters urge us to adopt the same approach here. We agree that a policy or practice may be technically feasible but not economically feasible, and vice versa.

82. *Standard.* At this time, we find that a case-by-case approach provides the Commission needed flexibility to evaluate issues of technical and economic feasibility. In the *NPRM,* the Commission sought comment on whether we should assess infeasibility claims on a case-by-case basis, adopt safe harbors, or take a combination of the two. In response, commenters voiced support for each of these approaches, as well as urging the Commission to adopt blanket presumptions of feasibility as opposed to a case-by-case review. We understand the arguments in favor of the adoption of one or more safe harbors to promote regulatory certainty and reduce the regulatory burden on providers, as well as arguments favoring a list of *per se* feasible methods of providing broadband internet access service or presumptions of feasibility in all or certain instances to increase compliance. The Commission has in the past adopted rules taking each of these approaches. Based on the record and information we have today, however, we find it is premature to incorporate safe harbors or feasibility presumptions into our definitions of technical and economic feasibility. In this connection, we defer any further decisions regarding the adoption of one or more safe harbors until we have developed experience on how they would operate in practice. As explained in more detail below, we do adopt a presumption of compliance from enforcement action that we find will lower the compliance burden for covered entities without compromising consumer protection. Thus, at this juncture, we will evaluate issues of technical or economic feasibility on a case-by-case basis so as to deter violations of our rules while allowing those issues to be fully explained to and considered by the Commission.

83. We also design our case-by-case approach to flexibly account for the differences between covered entities of varying sizes, technologies, and circumstances. We agree with those commenters, like Competitive Carriers Association, who encourage us to take a ''a practical and flexible approach that encourages innovation and investment to close the digital divide.'' Therefore, we decline at this time to adopt distinct standards or definitions for different types of covered entities. We find that our adopted definitions will allow the Commission to consider what is reasonably achievable for the particular entity under investigation. Moreover, as the Commission has found previously, legal or regulatory constraints can also be considered when determining technical feasibility.

84. Furthermore, we find that when the Commission conducts an investigation under the enforcement process described below, the entity under investigation will have the burden of proving to the Commission that the policy or practice in question is justified by genuine issues of technical or economic feasibility. The Commission has commonly taken this approach in previous approaches analyzing ''technical feasibility,'' as well as regarding satellite carriers claiming ''technical or economic infeasibility'' in the market modification context. In the context of section 60506, we find that assigning this burden to the entity under investigation is inherent in the structure of our definition of ''digital discrimination of access.'' We find, as the Commission has previously, that as a practical matter, it is the entity providing the justifications for its policies and practices that has access to the necessary information to support their factual assertions. And, as we have previously stated, those justifications will usually involve arguments and evidence that technical or economic constraints limit the availability of less discriminatory alternatives.

85. Finally, we emphasize that the Commission will closely scrutinize claims of technical or economic feasibility through review of documentation submitted by the entity under investigation, publicly available reports and other information, interviews and depositions of relevant personnel, and other available information. Under the Commission's market modification rules, the Commission created a process for satellite carriers to claim an inability to broadcast in certain locations due to technical and economic feasibility. In practice, the Commission's Media Bureau closely scrutinizes satellite carriers' infeasibility claims under § 76.59 of the Commission's rules. Similarly, in the context of our section 60506 rules, the Commission will not defer to the entity seeking to justify policies and practices alleged to be discriminatory. We will require proof by a preponderance of the evidence that the policy or practice in question is justified by genuine issues of technical or economic feasibility. Stated differently, a covered entity can demonstrate that a policy or practice is justified by genuine issues of technical or economic feasibility by showing that less discriminatory alternatives are not reasonably available and achievable because of genuine technical or economic constraints.

Prohibition of Digital Discrimination of Access

86. Today we adopt a rule broadly and directly prohibiting ''digital discrimination of access'' as we have now defined it. Our prohibition thus forbids both intentionally discriminatory conduct (that is, applies a disparate treatment standard) as well as conduct that produces discriminatory effects (that is, applies a disparate impact standard). This approach does not supplant, but rather supplements the Commission's past and ongoing efforts to facilitate broadband access through affirmative approaches.

87. At this time, we find that this broad prohibition and the enforcement mechanisms described below are the most cost-effective means to accomplish Congress's stated objectives in section 60506. Prohibiting discrimination in access to broadband service is necessary to facilitate equal access to broadband and prevent digital discrimination of access, and both of these goals are required by the statute. In that same vein, unequal access to broadband service imposes significant costs on unserved and underserved communities, and on the Nation as a whole. The voluntary informal complaint process described below is a low-cost approach toward meeting the statutory requirement that leverages existing Commission systems. Similarly, enforcement of the broad prohibition through self-initiated investigations affords the Commission ample flexibility without substantially overhauling the enforcement process. Such low-cost approaches will allow the Commission to enforce the statute in a cost-effective manner, while bringing the undeniable benefits of expanded broadband access. Lastly, our rules are designed to minimize the compliance- and other-related costs they will likely impose on broadband providers and the other entities our prohibition covers.

88. Fundamentally, a policy or practice will violate our prohibition on digital discrimination of access if it discriminates, either by intent or in effect, based on one of section 60506's listed characteristics. In determining whether a policy or practice violates the prohibition we adopt today, the Commission will look first to whether the policy or practice in question differentially affects access to broadband service or is intended to do so. If that question is answered in the affirmative, the Commission will review any issues of technical or economic feasibility that may compel use of the challenged policy or practice rather than a less discriminatory policy or practice. In other words, the rules we adopt today require assessment in the first instance of whether a policy or practice is discriminatory; and if so, whether there were reasonably available and achievable alternatives (*i.e.,* alternatives that were technically and economically feasible) that would have been less discriminatory.

89. We disagree with commenters asserting that section 60506 does not authorize a prohibition on private conduct. These commenters variously claim that section 60506, as part of the Infrastructure Act, only obligates the Commission to undertake affirmative-based efforts, *e.g.,* by funding the expansion of covered entities' broadband footprints or by promoting digital skill building and adoption of broadband by consumers through other initiatives outside this proceeding. Congress did not specify the means by which the Commission should fulfill its obligations under section 60506. As explained above, we conclude that the statutory language authorizes the Commission to address and combat both intentional discrimination and disparate impacts. The U.S. Chamber of Commerce contends that the Commission's adoption of ''new civil-rights legislation wholesale, including authorization of unfunded deployment mandates or rate regulation,'' would constitute a violation of the nondelegation doctrine. However, our prohibition today—a narrower action than that complained about—simply fulfills the task Congress, using clear language directing the Commission to prevent digital discrimination of access, gave us to perform. Adoption of these rules does not require an impermissible assumption of Congress's legislative powers; it only exercises the authority the Infrastructure Act conferred under the guidance provided in that statute. A prohibition of the kind we adopt today proves necessary to effectuate this charge. It does so by deterring discrimination in the first instance (thereby ''preventing'' its occurrence) while also enabling the Commission to target behaviors that affirmative-based approaches alone may be insufficient to change.

90. We also disagree with commenters arguing that a broad prohibition against digital discrimination of access will fundamentally transform the current regulatory landscape. As we explain below, our approach, which implements the directive in section 60506, involves self-initiated investigations. Such investigations may be premised on information submitted by the public, communications with state, local, or Tribal officials, or through outreach via other channels. However, we note that a complaint or allegation alone does not necessarily warrant an enforcement response from the Commission, thus ameliorating any such concerns raised by some commenters. Our prohibition—consistent with the Commission's nondiscrimination requirements associated with its ongoing efforts to promote broadband access—and the enforcement methods we outline below represent an important, yet incremental, step in furthering the Commission's and Congress's digital equity goals.

Scope of Prohibition

Covered Entities

91. We find that the digital discrimination of access rules we adopt today shall apply to entities that provide, facilitate and affect consumer access to broadband internet service. Covered entities include, but are not limited to, broadband providers as defined in rule 54.1600(b), contractors retained by, or entities working through partnership agreements or other business arrangements with, broadband internet access service providers; entities facilitating or involved in the provision of broadband internet access service; entities maintaining and upgrading network infrastructure; and entities that otherwise affect consumer access to broadband internet access service as further discussed below. In the *Notice of Inquiry,* we sought comment on *whose* ''policies or practices . . . that differentially impact consumers' access to broadband internet access service'' should be covered by our definition of digital discrimination of access. We also sought comment on whether we should understand digital discrimination of access to include policies or practices by a broader range of entities than broadband providers. To achieve the policy that ''subscribers should benefit from equal access to broadband internet access service,'' and fulfill Congress's directive that the Commission ''facilitate equal access to broadband internet access service,'' we have determined that the rules must include not only broadband providers, but also other entities that provide services that facilitate and affect consumer access. The record supports this determination. We thus find that there are a range of entities that facilitate and can affect consumer access to broadband. Therefore, we find that our rules and, in particular, our prohibition against digital discrimination of access, extend not only to broadband providers, but also to entities that provide services that facilitate and meaningfully affect

consumer access to broadband internet access service.

92. Numerous commenters agree that broadband providers are not the only entities that should be subject to these rules. To be sure, other platforms and organizations affect consumer access to broadband internet access service. For example, Lawyers' Committee for Civil Rights Under Law argues that section 60506 prohibits interference with equal access to broadband by any type of entity because guaranteeing equal access to broadband for all individuals requires applying the statute to any entity that can affect the ability of an individual to access the service, not just those entities that provide connectivity. And as TURN states, as technology evolves, the Commission's rules must be able to address future technological evolutions that may affect or interfere with broadband internet access. Lastly, National Digital Inclusion Alliance and Common Sense Media urge us to apply our rules to any entity—subsidiary, parent company, or other—that provides broadband internet access service.

93. We disagree with arguments that our authority under 60506(b) extends only to providers of broadband internet access service because ''only a service provider, and not some other class of entity, can 'offer' a 'service'.'' As explained below, we believe the definition of ''equal access'' in section 60506(a), which applies both to section 60506(b)'s mandate that we facilitate equal access and that we prevent digital discrimination of *access,* focuses on consumers' opportunity to receive and effectively utilize an offered service. Conduct by entities other than broadband providers might impede equal access to broadband internet access service on the bases specified in the statute. For example, the Lawyers' Committee for Civil Rights Under Law provides several examples of how entities may impact consumer access based on protected characteristics, including a landlord restricting broadband options within a building even if multiple providers are available. While we reach no conclusion whether this, or other specific examples in the record would be covered by our rules, we are persuaded that there could be situations—now or in the future—in which non-providers could impede equal access to broadband internet access service based on the listed characteristics. Moreover, while we are not explicitly tasked with regulating entities outside the communications industry, section 60506 does require us to facilitate equal access to broadband by ''preventing'' and identifying steps necessary to ''eliminate'' digital discrimination of access. Thus, to the extent that entities outside the communications industry provide services that facilitate and affect consumer access to broadband, they may be in violation of our rules if their policies and practices impede equal access to broadband internet access service as specified in the rules. To the extent that such entities have policies or practices that differentially impact consumers' access to broadband internet access service, we will consider, among other things, the closeness of the relationship between that entity's policies and practices and the provision of broadband service. By way of example, the U.S. Supreme Court long ago upheld the Commission's exercise of jurisdiction over prohibited surcharges imposed by hotels and apartment owners based on arrangements they made with the telephone company, and where the practice was ''so identified'' with the communications service that it was brought within the prohibition. We also note that section 411(a) provides as follows: ''In any proceeding for the enforcement of the provisions of this Act, . . . it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the charge, regulation, or practices under consideration, and inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers.''

94. Lastly, we acknowledge that commenters disagree on whether to include infrastructure owners and local governments within the scope of our rules, but we decline to expressly carve out specified entities from the scope of coverage at this time. City of Philadelphia, City of Oklahoma, City of Minneapolis, etc. (Local Governments) argue that not considering infrastructure owners as providers of broadband services subject to our digital discrimination of access rules would allow broadband providers to outsource their deployments to third parties to avoid our equal access rules. WIA disagrees with Local Governments in their assertion that infrastructure owners should be covered by the rules on digital discrimination of access, arguing that doing so would unlawfully expand the Commission's jurisdiction. Additionally, Local Governments request that we not categorize local governments as ''covered entities'' based on their roles as right-of-way managers or franchise regulators. While there may be tension in the record as to the role these entities play, our rule is clear that any entity that meaningfully affects access to broadband internet service is subject to our digital discrimination of access rules.

Covered Consumers

95. The definition of digital discrimination of access adopted today includes ''policies and practices . . . that differentially impact *consumers'* access to broadband internet access service . . . or are intended to have such differential impact.'' In the *NPRM,* we sought comment on the meaning of ''consumers'' and who would fall within the scope of this term. Commenters to the *NPRM* proposed various definitions. We today define ''consumers'' in this context to mean both current and potential subscribers, which includes individual persons, groups of persons, individual organizations, and groups of organizations having the capacity to subscribe to and receive broadband internet access service. We define ''subscriber'' as a current recipient of broadband internet access service as defined in § 8.1(b) of the Commission's rules.

96. Consistent with the purposes of section 60506, the term ''consumers'' as used in our adopted definition of digital discrimination of access comprises current subscribers and prospective subscribers of broadband internet access service. Our rules do not cover other types of broadband service, such as business data services or enterprise customer purchases. And, under this rule, individual or groups of persons, organizations, or businesses fall within the scope of the term ''consumer.'' Covering both current and prospective subscribers is supported for several reasons. First, section 60506's Statement of Policy directs the Commission to ''ensure that all people of the United States benefit from access to broadband.'' As the American Library Association observes, ''[t]here are 'people of the United States' who are not subscribers because they experience digital discrimination that precludes them from becoming subscribers.'' The California Public Utilities Commission further observes that ''one cannot count as a subscriber if broadband service is not offered to them in the first place.'' We agree. We would not be fulfilling our statutory mandate to facilitate equal access to broadband internet access service if we failed to include unenrolled or prospective subscribers as ''consumers'' under our rules. Second, limiting ''consumers'' to existing subscribers would do nothing to expand

broadband availability in unserved communities. By way of example, the Japanese American Citizens League expressed that a large number of small businesses in the historic San Francisco Japantown business district remain unconnected to the internet with reliable broadband access. If high-speed broadband service were unavailable in a particular geographic area because of discriminatory conduct, by definition there could be no subscribers in that area. And if the Commission's rules were limited to ensuring equal access by those already subscribing to a service, there would be nothing the Commission could do to investigate the reasons for this lack of access on the part of non-subscribers. Under the argument pressed by certain commenters, the Commission's rules would instead be confined to leveling service quality, pricing and other terms of service as between underserved communities and better-served communities. Such a limitation is not consistent with section 60506's overarching purpose to ''ensure that *all people* of the United States benefit from equal access to broadband internet access service.''

97. We therefore reject commenters' arguments that the ''consumers'' covered by our rules should be limited to subscribers. We disagree with NTCA's argument that the Commission's purview is limited to ''subscribers,'' referring to ''those who purchase service from the provider.'' The Commission cannot fulfill Congress's directive to facilitate equal access to broadband internet access service without being able to address the issues that limit the opportunity to subscribe in the first instance. We firmly believe Congress intended the rules implementing section 60506(b) to facilitate the expansion of access of broadband service by eliminating discrimination, not just the leveling of service quality and terms. Therefore, our rules for digital discrimination of access cover all consumers, including both current and prospective subscribers.

98. We also find that, for purposes of our definition of ''digital discrimination of access,'' the term ''consumers'' includes not only individuals, but also groups of persons, organizations, and businesses. We agree with National Digital Inclusion Alliance and Common Sense Media that digital discrimination of access can manifest differently when it affects a single person, as compared to a group of persons within a community, and either type of discrimination can violate the rules.

99. In the *NPRM,* we sought comment on whether there are practical or administrative costs and benefits to the Commission, industry and those who might suffer discrimination if both persons and organized groups of persons (such as community associations) are covered by our definition. As supported by the comments, we find no significant additional costs in defining ''consumers'' to include persons and organized groups of persons, as well as groups of organizations. As discussed in the informal complaints section below, we recognize that community associations and other organizations might well submit the majority of informal complaints relating to digital discrimination of access, and we have no concerns on that score.

Listed Characteristics

100. Congress identified six characteristics as bases for digital discrimination of access—income level, race, ethnicity, color, religion, and national origin. In the *NPRM,* we sought comment on whether we should expand our definition to include additional characteristics, such as disability status, age, sex, sexual orientation, gender identity and expression, familial status, domestic violence survivor status, homelessness, and English language proficiency. While some commenters argue we should expand the listed characteristics, others disagree.

101. Based on the language of the statute, we do not add to the listed characteristics of persons protected under the rules that serve as the bases for considering digital discrimination of access. Even though the statute affords protection against digital discrimination of access based on national origin, some commenters urge us to incorporate ''limited-English proficiency'' (LEP) as an express listed characteristic under the rules. It is well established, however, that discriminating against persons based on their limited-English proficiency can constitute a form of national origin discrimination. Federal agencies have interpreted Title VI's prohibition against national origin discrimination to require that LEP individuals have meaningful access to federally funded programs and activities. This same interpretation as to national origin discrimination has been given under the Fair Housing Act. Congress must be presumed to have deliberately limited the list of protected characteristics in section 60506(b) to income level, race, ethnicity, color, religion, and national origin. While we acknowledge the strong record support for extending the rule to cover persons with other characteristics, federal antidiscrimination laws often vary in terms of the protected classes they cover. For example, many commenters discussed the challenges faced by people with disabilities in securing access to high quality broadband services. For instance, Title VII of the Civil Rights Act protects against discrimination based on ''race, color, religion, sex, or national origin,'' whereas the FHA goes further and includes additional protections for ''disability and familial status.'' Here, Congress chose the six listed, protected characteristics and not others. This does not mean that the legitimate concerns of persons with these additional characteristics is to be minimized. To the contrary, the record is replete with evidence that classes beyond the six listed groups face varying broadband-related challenges. We have no discretion to overrule the choice made by Congress in this regard, at least as it applies to our rules implementing section 60506(b). Under section 60506(c)(3), the Commission and the Attorney General can seek to prohibit ''deployment discrimination'' based on factors other than those listed in that section, based on the record developed in this proceeding. Further, even if not covered by Section 60506(b), people with disabilities may avail themselves of other federal laws governing digital accessibility, such as the Americans with Disabilities Act of 1990 (ADA), the Rehabilitation Act of 1973, and the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA).

102. Our work towards ensuring broadband access does not begin or end with this statute. We will continue to address access to broadband under other sources of authority. For example, we have established accessibility protections under other statutory grants that govern the ACP, ECF, and EBB programs. The ACP supports the purchase of broadband access services and connected devices, such as tablets and laptops, and requires them to be accessible. In the Emergency Connectivity Fund Report and Order, the Commission established an expectation that connected laptops be accessible to students, school staff, and library patrons with disabilities to address their remote learning needs. For these connected laptops, school districts have purchased accessibility features such as software providing screen magnification, screen reading functionalities, captioning services, and touchscreens for students with significant fine motor skills difficulties. As we move forward, we will continue to use all the tools at our disposal to ease the digital accessibility divide.

Covered Services

103. For purposes of these rules, we apply the same definition of ''broadband internet access service'' that appears in § 8.1(b) of the Commission's rules. That definition states: The term ''broadband internet access service'' means ''a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service. This term also encompasses any service that the Commission finds to be providing a functional equivalent of the service described in the previous sentence or that is used to evade the protections set forth in this part.'' We use the terms ''broadband,'' ''covered services,'' and ''broadband internet access service'' interchangeably.

104. In the *NPRM,* we sought comment on the scope of services that should be covered by our rules. We also specifically sought comment on whether the above-referenced definition of ''broadband internet access service'' fully captures the scope of technologies relevant to digital discrimination of access. In determining the scope of our definition of digital discrimination of access, we find that the term ''broadband internet access service'' in that definition has the same meaning given the term in § 8.1(b), and encompasses the range of services that may give rise to digital discrimination of access. In the proposed definition of ''digital discrimination of access,'' the Commission sought comment on whether ''covered services'' should be limited to broadband internet access service. No commenter opposed using this definition of ''broadband internet access service.'' We find that the straightforward and well-established definition best delineates the scope of covered services under the rules we adopt today.

105. Moreover, the record reflects strong support for adopting § 8.1(b)'s definition. As Local Governments notes, including all types of broadband providers is consistent with the *Restoring Internet Freedom Order,* 80 FR 19737, which found that the term ''broadband internet access service'' includes ''services provided over any technology platform, including but not limited to wire, terrestrial wireless (including fixed and mobile wireless services using licensed or unlicensed spectrum), and satellite.'' Providers can use various forms of technology to provision broadband to consumers, including digital subscriber line (DSL), cable modem, fiber, fixed and mobile wireless, and satellite. By incorporating the established meaning of ''broadband internet access service'' in the definition of ''digital discrimination of access,'' we ensure that our rules accurately reflect the scope of services that may give rise to instances of digital discrimination of access and thus fulfill the Congressional direction in section 60506 to facilitate equal access to broadband internet access service and prevent digital discrimination of access.

Covered Elements of Service

106. The rules we adopt today apply to any lack of comparability in service quality, as indicated by the metrics specifically listed in the statutory definition of ''equal access'' as well as any ''other quality of service metrics in a given area,'' and to any lack of comparability in terms and conditions of service, including but not limited to price. We find this scope of coverage to be consistent with section 60506's statutory text and necessary to effectuate its purpose.

107. In broadly applying our rules to all relevant service quality metrics and all terms and conditions of service, we note that Congress directed the Commission to facilitate equal access to the entirety of broadband internet service, not to certain elements of such service. Congress defined ''equal access'' in section 60506's statement of policy to mean that consumers have ''the equal opportunity to subscribe'' to broadband internet access service with ''comparable speeds, capacities, latency, and other quality of service metrics in a given area, for comparable terms and conditions[.]'' As many commenters explain, the inclusion of ''other quality of service metrics'' and ''comparable terms and conditions'' in the definition of ''equal access'' reflects Congressional intent and authorization that the Commission's digital discrimination of access rules cover any aspect of broadband internet access service that impedes, impairs or denies ''equal access'' to that service.

108. The aspects of service that could affect a consumers' ability to receive and effectively utilize broadband internet access service include, but are not limited to, deployment, technical terms and conditions of service, such as policies and practices regarding speeds, capacities, latency, data caps; network infrastructure deployment, network reliability, network upgrades, network maintenance, customer-premises equipment, and installation; as well as non-technical terms and conditions of service, such as policies and practices regarding contractual terms generally, mandatory arbitration clauses, pricing, deposits, discounts, customer service, language options, credit checks, marketing or advertising, contract renewal, upgrades, account termination, transfers to another covered entity, and service suspension. Moreover, in order to fully effectuate the goals of section 60506, we find that our rules must cover both actions and omissions, whether recurring or a single instance, concerning these aspects of service, that defeat comparability of service quality, terms, and conditions.

109. We find that adopting a broad definition of covered elements of service is both consistent with the language of section 60506 and necessary to fulfill its purpose. First, by including the catch-all language ''and other quality of service metrics in a given area,'' Congress expressly authorized the Commission to supplement the listed elements of service to include all measurable quality-of-service elements that could affect consumers' ability to receive and effectively utilize broadband internet access service. As the record reflects that policies and practices relating to an array of technical and non-technical aspects of service can affect a consumer's ability to access broadband, a definition with a narrower scope could lead to the Commission's rules failing to cover some aspects of service that result in digital discrimination of access. Consequently, we agree with Lawyers' Committee for Civil Rights Under Law that adopting a flexible approach is necessary ''to capture the long tail of intangible variables that are difficult to list exhaustively and are subject to change.'' Second, our definition provides us with the advantage of flexibility, which will ''future proof'' our rules as technologies, policies, and practices change over time. For these reasons, we reject the argument that by including certain quality of service metrics in 60506(a)(2), Congress foreclosed consideration of other measurable elements of service quality in evaluating whether equal access has been achieved.

110. We reject arguments that we should limit the scope of covered elements of service to deployment practices or technical terms of service, or that we exclude certain terms, such as pricing. We are persuaded that Congress intended for the Commission's rules implementing section 60506(b) to cover more than deployment practices. As noted above, Congress directed the Commission in section 60506(b) to adopt rules to facilitate equal access to broadband internet access service,

including ''preventing digital discrimination of access'' and identifying necessary steps for the elimination of such discrimination. By contrast, in section 60506(c), Congress directed the Commission and the Attorney General to ensure that federal policies prohibit ''deployment discrimination'' based on the income level of an area, the predominant race or ethnicity of an area, or other factors the Commission determines to be relevant based on the record in this proceeding. Had Congress wished to limit the scope of section 60506(b) to ''deployment discrimination,'' it would have done so explicitly. The use of two different terms (''digital discrimination of access'' and ''deployment discrimination'') in adjacent subsections of a one-page section of the statute clearly indicates that Congress intended the two terms to have different meanings. Further, Congress was well aware that factors other than initial deployment of the necessary network infrastructure, such as network upgrades and maintenance at an absolute minimum, affect the ability of consumers to effectively utilize broadband internet access service. Given that the definition of ''equal access'' expressly includes ''quality of service metrics'' that are determined by such network upgrades and maintenance, we cannot accept that Congress intended to limit section 60506(b)'s reach to broadband deployment. Such an interpretation would defeat the purpose of the statute.

111. Finally, regarding the inclusion of pricing within the scope of our rules, we find that the statutory language encompasses discriminatory pricing. We emphasize that the rules we adopt today do not set rates for broadband internet access service and are not an attempt to institute rate regulation. Once again, section 60506(b) directs us to ''adopt final rules to facilitate equal access to broadband internet access service,'' and ''equal access'' is defined in section 60506(a)(2) as the equal opportunity to subscribe to an offered service that provides comparable quality of service ''*for comparable terms and conditions.*'' (emphasis added). We are unpersuaded by the arguments of commenters that pricing is not included (or includable) in the terms and conditions that must be ''comparable'' under the statutory definition of equal access. Indeed, pricing is often the most important term that consumers consider when purchasing goods and services across the Nation's economy. We find this is no less true with respect to broadband internet access service. Consequently, we do not believe it was necessary for Congress to specifically reference pricing in the definition of ''equal access'' because the most natural reading of ''terms and conditions'' includes pricing. Moreover, it would be odd for Congress to direct the Commission to consider technical and economic feasibility and have our rules not allow any consideration of differential pricing when analyzing a digital discrimination of access claim. The Commission need not *prescribe* prices for broadband internet access service, as some commenters have cautioned against, in order to determine whether prices are ''comparable'' within the meaning of the equal access definition. The record reflects support for the Commission ensuring pricing consistency as between different groups of consumers. We also find that the Commission is well situated to analyze comparability in pricing, as we must already do so in other contexts. For example, we analyze the ''lowest corresponding price'' in the universal service context and conduct the Urban Rate Survey, both of which require comparing the prices that covered entities charge different groups of customers for broadband. We find that the ''terms and conditions'' covered by the ''equal access'' definition in section 60506(a) includes pricing terms and conditions, and that ''digital discrimination of access'' therefore includes discrimination with regard to such pricing.

112. We also reject Verizon's argument that our rules cannot apply to policies and practices that occur after a customer subscribes to broadband internet access service. Verizon argues that the definition of ''equal access'' limits the scope of our rules to policies and practices affecting only the ''opportunity to subscribe'' to broadband service *in the first instance.* In other words, Verizon argues that our rules can only address policies and practices concerning the consumer's ability to sign up for service (*i.e.,* contract formation), but cannot address whether the service is actually rendered on equal terms (*i.e.,* contract performance). We disagree with this interpretation. We acknowledge that the definition of ''equal access'' in section 60506(a) refers to the ''equal opportunity to *subscribe* to an offered service . . . .'' But we find the word ''subscribe'' in this context means more than simply signing up for service. It refers, instead, to the ability to receive and effectively utilize the service so as to allow full participation in the social, educational, political and economic life of our Nation. The Statement of Policy in section 60506(a) says that ''subscribers should *benefit* from equal access to broadband internet access service'' and that ''the Commission should take steps to ensure that all people of the United States *benefit* from'' such equal access. There is little or no benefit to be derived simply from having the opportunity to sign up for broadband service if the covered entity can freely engage in discriminatory policies and practices with regard to the ongoing provision of that service. Rather, the potential social, educational, political and economic benefits flow from having the opportunity to receive the service and effectively utilize it. We find that interpreting section 60506 in the cramped manner urged by Verizon is flatly inconsistent with Congress's goal of expanding access to broadband internet access service. We therefore reject that interpretation.

Revising Commission's Informal Consumer Complaint Process

113. We adopt the proposals in the *NPRM* to revise our informal consumer complaint process to: (1) add a dedicated pathway for digital discrimination of access complaints; (2) collect voluntary demographic information from filers who submit digital discrimination of access complaints; and (3) establish a clear pathway for organizations to submit digital discrimination of access complaints. Subsection 60506(e) requires that the Commission ''revise its public complaint process to accept complaints from consumers or other members of the public that relate to digital discrimination.'' Currently, consumers use the Commission's Consumer Complaint Center to file informal complaints. The Commission's informal consumer complaint process, administered by the Consumer and Governmental Affairs Bureau, is a long-standing, free and efficient way for consumers to raise issues with their service providers and bring problems to the attention of the Commission. The FCC's informal consumer complaint process facilitates a conversation between the consumer and their provider to address the consumer's issues. The consumer complaint process does not involve arbitration, mediation, or investigation. The collective data received from informal consumer complaints help the Commission monitor what consumers are experiencing and inform our policy and enforcement work. In adopting our proposed changes to our informal consumer complaint process, we implement subsection 60506(e).

114. We agree with the majority of commenters who assert that consumers should have an easily accessible complaint process. Such a process will not only benefit consumers in filing complaints related to digital discrimination of access but will also assist the Commission in monitoring what consumers are experiencing, identifying trends, and informing potential policy determinations or enforcement. We note that the Commission's Consumer Complaint Center is responsive on mobile devices and that the FCC's call center is staffed by both English and Spanish speaking agents who can file complaints on behalf of consumers. Individuals who use videophones and are fluent in American Sign Language (ASL) may call the Commission's ASL Consumer Support line for assistance in ASL with filing informal complaints or obtaining consumer information. Consistent with our current process and procedures, consumers may also file complaints via the Consumer Inquiries and Complaint Center, as well as by fax and postal mail.

115. We thus disagree with commenters who argue that our proposed informal complaint process changes would impose undue burdens on covered entities. Our proposed changes do not alter the existing informal complaint process. Rather, our proposed changes make it easier for consumers to file informal complaints related to digital discrimination of access, as mandated by Congress, and allow the Commission to better analyze such complaint data. Indeed, Commission experience with the dedicated pathway for ACP complaints has demonstrated the utility of such a dedicated pathway.

116. We also disagree with the International Center for Law & Economics, which argues that the Commission should implement a legal ''standing'' requirement for filing informal complaints. The Commission's informal consumer complaint process is designed specifically to provide consumers with a simple and efficient way raise concerns and file complaints with the Commission without complicated legal procedures, filing fees, or other burdensome requirements. The Commission does not currently impose any standing requirements for filing informal consumer complaints. Adopting a standing requirement specifically for digital discrimination of access issues with the Commission would, in effect, thwart a consumer's ability to do so. Such an outcome would be contrary to the express language of section 60506.

Dedicated Pathway for Digital Discrimination of Access Complaints

117. We adopt our proposal to add a dedicated pathway for digital discrimination of access complaints. This dedicated pathway will provide digital discrimination informational content in the Consumer Complaint Center to educate consumers about digital discrimination and to provide clear instructions to consumers on how to correctly file a digital discrimination complaint. Consumers will be able to submit their digital discrimination of access complaints through the Consumer Inquiries and Complaint Center. They will be required to choose an issue that best describes their complaint and include a narrative with pertinent details. These complaints will be reviewed and processed. If the consumer submits a complaint alleging digital discrimination of access by a covered entity, the complaint will be forwarded to the appropriate covered entity for investigation and the Commission may set a due date for the covered entity to provide a written response to the informal complaint to the Commission, with a copy to the complainant. Complaint information will be reviewed internally to inform policy and shared internally, when appropriate, for potential enforcement. In addition, we note that the Commission's established administrative processes and procedures afford the Enforcement Bureau access to all consumer complaint data that is submitted through the Consumer Inquiries and Complaint Center. The record in this proceeding reflects widespread support for establishing such a pathway. We agree with commenters that adding a dedicated pathway will increase both the accessibility and efficiency of the complaint process. We direct the Consumer and Governmental Affairs Bureau to implement this dedicated pathway and, in coordination with the Wireline Competition Bureau, to monitor complaints submitted through this pathway to assist in the formulation of future policy and consumer education initiatives.

118. We also agree with those commenters who stress the need to educate consumers on the issue of digital discrimination of access and the complaint process associated with such complaints. We direct the Consumer and Governmental Affairs Bureau, in coordination with the Wireline Competition Bureau, to develop materials to educate consumers on digital discrimination of access and on how to file complaints via the dedicated pathway.

119. *Need for Dedicated Pathway.* We find that our informal consumer complaints process provides the best opportunity for consumers to inform the Commission of digital discrimination of access issues. The informal complaint process requires no complicated legal procedures, has no filing charge, and does not require the complaining party to appear before the Commission, making it an easy and efficient method for consumers to bring issues to the Commission's attention. The Commission reviews informal consumer complaints and, when applicable, will identify trends and share information internally in furtherance of our enforcement and consumer protection efforts. As the Commission takes seriously its enforcement obligations, we direct the Enforcement Bureau, in coordination with the Consumer Governmental Affairs Bureau and the Wireline Competition Bureau, to expeditiously investigate potential violations and enforce our rules using the Commission's traditional enforcement mechanisms.

Voluntary Demographic Information Collection

120. We adopt our proposal to collect voluntary demographic information from filers who submit digital discrimination of access complaints. We note that the statute requires the Commission to ''prevent[ ] digital discrimination of access based on income level, race, ethnicity, color, religion, or National origin[.]'' We find that collecting minimal, voluntary demographic information from individuals filing complaints may enable us to identify and understand some underlying patterns of digital discrimination of access that might not otherwise be apparent from the substance of the complaints, thus increasing the utility of the informal complaint process as it relates both to policy development and enforcement. We agree that this collection should be voluntary on the part of the complainant and direct the Consumer and Governmental Affairs Bureau to make clear that this information is not required in order to submit a digital discrimination of access complaint, that the provision of such information will not affect the submission or processing of the complaint, why this information is being collected, how it will be used, and how it will be maintained by the Commission. We note that the Commission's use and disclosure of such information will be subject to the applicable System of Records Notice

(SORN) governing our informal complaints system, which the Commission will modify, if necessary, based on this *Report and Order.*

121. We disagree with WISPA that providing demographic information should be mandatory. We are concerned that requiring this information may deter consumers from filing complaints. Because the purpose of our changes is to encourage consumers to file informal complaints when they believe our rules may have been violated, we find that the potential deterrence effect from requiring such information outweighs any potential benefit from making the provision of such information mandatory.

Pathway for Organizations To Submit Digital Discrimination of Access Complaints

122. We adopt our proposal to establish a clear pathway for organizations to submit digital discrimination of access complaints. We agree with commenters that allowing community partners and third-party organizations to file informal complaints on behalf of consumers (individuals or groups of individuals) will enable the Commission to better identify substantive complaints and collaborate with state, local and Tribal governments when addressing such complaints. We also agree with commenters such as the National League of Cities that allowing third parties to file on behalf of consumers will improve access to our informal complaint process for those with language barriers, limited digital skills, and/or limited access to devices or connectivity. Improving access to our informal complaint process serves both as an important safeguard for marginalized communities and as a means of ensuring that our complaint data is complete and accurate.

123. We disagree with commenters who suggest that third party filers should be subject to more burdensome procedural or evidentiary standards. We find that the benefits of promoting and enhancing access to our informal complaint process far outweigh the limited risks outlined by the commenters. We agree with Public Knowledge that one of our primary goals is to ''further enable marginalized communities to be represented through the complaint process'' and that ''to throw up additional barriers would undermine this goal.''

124. *Making Available Anonymized Complaint Data.* We adopt our proposal to make anonymized or otherwise de-identified complaint data available to the public. We direct the Consumer and Governmental Affairs Bureau, in coordination with the Wireline Competition Bureau, the Office of Economics and Analytics, and the Office of General Counsel, to periodically make publicly available anonymized or otherwise de-identified digital discrimination of access complaint data. The record in this proceeding reflects widespread support for this proposal. We agree with commenters that such data would be useful to third parties in conducting research, advocacy, and reporting, and we find that these data can be released without compromising the privacy of individual complainants. We find that public release of anonymized or otherwise de-identified data would also promote transparency and empower third parties to assist the Commission in identifying trends in digital discrimination of access.

Enforcement

125. We find that effective implementation of section 60506 requires use of the Commission's traditional enforcement mechanisms to fulfill Congress's mandate that the Commission prevent and identify necessary steps to eliminate digital discrimination of access. This includes the full gamut of the Commission's enforcement toolkit, which ranges from letters of inquiry to remedial orders to forfeiture proceedings. Alleged or otherwise apparent instances of digital discrimination of access will be investigated on a self-initiated basis. This approach, which affords the Commission necessary flexibility for tackling Congress's directives, will involve data gathering via complaints and allegations made through the Commission's informal complaint process by state, local, and Tribal officials, and via other sources.

126. As explained above, a policy or practice will violate our prohibition on digital discrimination of access if it discriminates, either by intent or in effect, based on one of section 60506's listed characteristics. In examining policies and practices, the Commission will look to whether the policy or practice in question differentially affects access to broadband internet access service or is intended to do so. If yes, then the Commission will look to whether less discriminatory options were available. Thus, the rules we adopt today involve a twofold assessment: first, whether a policy or practice is discriminatory; and if so, whether there were reasonably available and achievable alternatives (*i.e.,* alternatives that were technically and economically feasible) that would have been less discriminatory.

Legal Authority

127. In the *NPRM,* we sought comment on how the Commission should enforce any such rules we might adopt, including by use of our existing ''enforcement toolkit of letters of inquiry, notice of apparent liability, and forfeiture orders.'' We further sought comment on any limitations thereon, highlighting a dispute among commenters about the legal authority underlying the use of these enforcement mechanisms. We conclude that these same tools may be used to enforce the rules we adopt today pursuant to section 60506. Implementing the statute's directives necessitates use of these tools and processes, which will facilitate Congress's and the Commission's goal of facilitating equal access by preventing digital discrimination of access and identifying means to eliminate such discrimination.

128. We find that subsection (b)(1) and (e) under section 60506 provide the Commission express authority to enforce its mandates using the Commission's normal suite of enforcement mechanisms. Section 60506 directs the Commission to adopt final rules to ''prevent[ ] digital discrimination of access,'' and to ''identify[ ] necessary steps'' for eliminating such discrimination. Use of the words ''prevent'' and ''eliminate'' is unusual in the context of a federal anti-discrimination statute. Congress usually adopts a statutory prohibition on the types of discrimination it seeks to address, then tasks the relevant administrative agency with implementing the prohibition through agency rules. As discussed in prior sections of this Order, the words ''prevent'' and ''eliminate'' constitute strong medicine and represent a broad mandate for the Commission to take the necessary measures to fully eradicate digital discrimination of access. Moreover, a prohibition without enforcement cannot reasonably be expected to affect conduct in a meaningful way. Indeed, various commenters have identified the use of existing Commission enforcement mechanisms as necessary tools for ensuring compliance with our rules. Others contend that without the use of such tools, section 60506 could not function as Congress intended. Similarly, there would be little point for Congress to direct the Commission to accept complaints of digital discrimination of access if we lacked any of our traditional powers to act on them. The existing ''public complaints

process'' serves the agency's general authority to enforce the Communications Act, so we interpret the mandate in subsection (e) to reflect Congress's intent that the agency enforce digital discrimination complaints under the Act's general enforcement provisions.

129. However, some commenters argue that the Commission lacks authority, both under the Communications Act and section 60506, to enforce any rules prohibiting digital discrimination of access. They argue that because Congress did not expressly incorporate section 60506 into the Communications Act, any remedies or enforcement mechanisms found in the Communications Act are unavailable, and section 60506 does not authorize the use of such enforcement tools. AT&T, for example, argues that Congress's decision to ''keep [s]ection 60506 out of the Communications Act and to avoid cross-references between it and Title V'' reflects Congress's desire to make enforcement by traditional mechanisms unavailable. CTIA similarly observes that unlike other provisions of the Infrastructure Act, such as section 60502, Congress did not explicitly enable the Commission to ''impose forfeiture penalties under [s]ection 503 of the Communications Act'' in section 60506, rendering those tools unusable.

130. We disagree with those asserting that section 60506 does not authorize the use of the Commission's existing enforcement mechanisms. Congress's decision not to incorporate section 60506 into the Communications Act does not suggest that it contemplated only voluntary compliance with rules designed to ''prevent'' digital discrimination of access. Although some commenters argue that Congress implicitly or indirectly incorporated section 60506 into the Communications Act, we need not rely on such arguments to justify our approach. Rather, we agree with commenters asserting that section 60506, standing alone, authorizes the Commission to adopt or amend enforcement rules deemed necessary to facilitate equal access and prevent digital discrimination of access, including the use of the Commission's existing enforcement mechanisms.

131. As discussed above, section 60506 authorizes the Commission to incorporate both disparate treatment and disparate impact standards in its definition of digital discrimination of access and, consequently, to adopt rules prohibiting covered entities from engaging in such practices. Contrary to arguments that section 60506 tasks the Commission with ''facilitat[ing] equal access'' by way of funding providers' deployment efforts, the statute expressly commands the Commission to *prevent* digital discrimination of access. That is, Congress tasked the Commission with adopting rules that would curb digital discrimination of access before its occurrence. Even had Congress tasked the Commission only with implementing a statutory prohibition on digital discrimination of access (a mandate that would be less broad than the one we were given), the Commission could not do so merely through suggestion. We are aware of no instance in which a federal anti-discrimination law is without any enforcement mechanism whatsoever. Industry fails to explain how ''affirmative-based approaches,'' like funding opportunities, would effectively implement our mandate to ''prevent'' digital discrimination of access. No commenter suggests that the solution to digital discrimination of access, as we have defined it, requires directing more funds to the entity responsible for such conduct. Indeed, others call such a result absurd. Because preventing digital discrimination of access requires some kind of ''stick'' in addition to ''carrots,'' it would render much of section 60506 a ''nullity'' were the Commission to interpret the statute to preclude enforcement of our rules implementing section 60506.

132. We find that section 60506 provides the Commission authority to enact such rules as are necessary to fulfill its statutory obligations—including, for example, amendment or readoption of our existing enforcement rules in the specific context of digital discrimination of access. Section 60506(b) directs the Commission to ''adopt final rules to facilitate equal access to broadband internet service . . . including . . . preventing digital discrimination of access . . . .'' And as we explain above, our enforcement tools are indispensable in fulfilling this mandate. Section 60506 therefore authorizes the Commission to adopt, readopt, or amend enforcement-related rules as necessary to accomplish this task.

133. Finally, we find that section 4(i) of the Communications Act provides the Commission ancillary authority to carry out its statutorily mandated duties under section 60506, including enforcement of a prohibition on digital discrimination of access. Section 4(i) provides that ''[t]he Commission may perform any and all acts, make such rules and regulations, and issue such orders, . . . as may be necessary in the execution of its functions.'' Effective enforcement rules are reasonably ancillary to the Commission's statutorily mandated responsibility to combat discrimination in providing access to broadband service. Arguments to the contrary highlight that section 60506 does not fall within the scope of the Communications Act and that its mandate lacks a limiting principle. But as TechFreedom acknowledges, section 4(i) enables the Commission to carry out duties conferred by Congress outside those outlined in the Communications Act. And as explained above, contrary to claims that use of its ancillary authority in this instance would release the Commission '' 'from its congressional tether' '' or would ''exceed the bounds of its statutorily[ ] delineated authority,'' the Commission's establishing and enforcement of today's prohibition logically extends from and satisfies Congress's mandate of preventing digital discrimination of access.

134. We note that the enforcement measures and final rules that we adopt today do not represent all that the Commission can—and must—do to combat digital discrimination of access. As noted above, section 60506(b) directs the Commission to adopt ''final rules'' to: (1) prevent digital discrimination of access and (2) identify necessary steps for the Commission to take to eliminate such discrimination. We interpret Congress's directive with respect to ''eliminating'' digital discrimination of access to include steps not taken in our implementing rules that might ultimately be necessary to ensure that such discrimination does not occur after the effective date of our rules. Congress has tasked us to identify any such ''necessary steps'' so they can swiftly be undertaken if and when determined to be necessary, and so Congress can consider what additional statutory authority, if any, might be necessary to allow for full achievement of the equal access goal. We believe the rules we adopt today, coupled with the affirmative requirements proposed in the *Further Notice of Proposed Rulemaking,* FCC 23–100, released November 20, 2023, (*Further Notice*), represent the measures necessary both to ''prevent'' and ''eliminate'' digital discrimination of access in the future. As such, we find our actions today satisfy the Commission's obligations under section 60506(b)(1) and, at a minimum, takes initial steps towards addressing our obligations under section 60606(b)(2).

135. We disagree with those asserting that enforcement of our prohibition raises a major-questions-doctrine issue. As explained below, the Commission's

self-initiated investigation process does not reflect a substantial overhaul of the Commission's enforcement mission. Nor does taking this step, modest in comparison to the concerns raised by some commenters, risk fundamentally altering the landscape of the telecommunications industry. As employers, covered entities should be familiar with the standards and processes for establishing liability under Title VII of the Civil Rights Act of 1964, and many of these entities must already comply with the nondiscrimination requirements associated with the receipt of federal funds. Moreover, the Commission does not find in section 60506 an ''elephant[ ] in a mousehole'' as some commenters argue. To the contrary, Congress here explicitly called on the Commission to prevent and identify necessary steps to eliminate digital discrimination of access. It mandated, using clear language, that the Commission adopt rules necessary for doing so. Our adoption of a prohibition on digital discrimination of access is directly responsive to Congress's charge, and our use of the Commission's enforcement mechanisms a necessary component of those efforts.

136. At the same time, we do not agree with some commenters' suggestion that section 60506(b)(2) represents a broad grant of authority to the Commission to require covered entities to undertake remedial measures to eradicate the effects of conduct predating the effective date of our rules. While section 60506(b)(2) authorizes the Commission to ''identify'' the steps necessary to eliminate the discrimination identified in subsection (b)(1), it does not, in our view, constitute a clear grant of authority to impose retroactive liability on industry participants. Moreover, we note that determining when and where digital discrimination of access occurred across the country in the past, how to remedy such discrimination, and how to assign and allocate the cost of such remediation, would represent highly time- and resource-intensive undertakings. We will not presume that Congress intended for the Commission to undertake these highly complex tasks without clear evidence to that effect. Accordingly, for purposes of implementing section 60506(b), we will train our focus on preventing—and thus eliminating—digital discrimination of access occurring after the effective date of our rules.

Amending Commission Rules

137. We amend some of our existing enforcement rules today to enshrine the processes by which the Commission will undertake investigations of claims of digital discrimination of access. These include changes to Rule 1.80, which details our forfeiture procedures, so that it will now reference the provisions of section 60506 in addition to those of the Communications Act and other statutes. Rule 1.80, which acts as our implementing rule for forfeiture proceedings, states that a forfeiture penalty may be assessed against any person found to have violated either designated provisions of the Communications Act (and rules related thereto); Title 18 of the United States Code; or section 6507 of the Middle Class Tax Relief and Job Creation Act of 2012, as well as rules, regulations, and orders promulgated thereunder. Additionally, Rule 0.111 will now reflect the Enforcement Bureau's direction to investigate claims of digital discrimination of access and make recommendations as to potential violations and penalties. We adopt these amendments pursuant to the authority expressly granted to the Commission in section 60506(b).

Enforcement Framework

138. The Commission will launch investigations into complaints and allegations of digital discrimination of access on a self-initiated basis and, where the Commission determines a violation has occurred, pursue remedies and penalties. Investigations may stem from complaints filed through the informal complaint process or information otherwise brought to the Commission's attention. As outlined above, the Commission will adopt a dedicated pathway for accepting digital discrimination of access claims from the public. Additionally, the Commission may receive allegations of digital discrimination of access from state, local, or Tribal governments. And as proposed in the *Further Notice,* the Commission may in the future obligate covered entities to make filings to the Commission as part of their affirmative obligations to assist in combating digital discrimination of access,[2] filings that similarly might serve as a basis for investigation. Irrespective of the origin of such complaints and information, the Commission will—at its discretion—determine whether investigation by the agency is warranted and whether further response from the entities alleged to have violated our rules will be required. However, we recognize that broadband providers and other covered entities may need time to review their policies and practices in light of the rules we adopt today. Accordingly, we will not initiate any enforcement investigation solely concerning conduct that produces differential impacts under these rules until at least six months after the effective date of the rules.

139. The Commission will conduct its investigations of digital discrimination of access complaints and allegations consistent with federal law and in a manner consistent with the processes and procedures followed by other federal agencies. Taking this approach ensures alignment with civil rights models, as suggested by some commenters. In investigating complaints and allegations of digital discrimination of access, we adopt the legal standards for proving discriminatory treatment and disparate impact set out below and in our discussion above of disparate impact and disparate treatment standards as they relate to our definition of digital discrimination of access.

140. *Investigating complaints alleging that a policy or practice is intended to differentially impact consumers' access to broadband internet access service on a prohibited basis.* Direct evidence of discriminatory intent is rare. For that reason, intentional discrimination is typically proven by circumstantial evidence. The two legal standards for reviewing circumstantial evidence of intentional discrimination are set out in *Vill. of Arlington Heights* v. *Metro. Housing Dev. Corp.,* 429 U.S. 252, 266 (1977) (*Arlington Heights*) (providing the framework for analyzing whether facially neutral policies or practices are motivated by discrimination) and *McDonnell Douglas Corp.* v. *Green,* 411 U.S. 792 (1973) (*McDonnell Douglas*) (providing the framework for allocating proof for claims of disparate treatment discrimination). Federal agencies historically have used two chief legal frameworks in evaluating whether circumstantial evidence supports an inference of discriminatory intent, depending on the nature of the alleged discrimination. We will investigate complaints of intentional discrimination under these frameworks.

141. *When a facially neutral policy or practice is allegedly motivated by discrimination: Arlington Heights standard.* The *Arlington Heights* framework applies when an otherwise facially neutral policy or practice is allegedly motivated by discrimination. Under this framework, as applied in the context of section 60506, the Commission, as factfinder, will evaluate a variety of factors that contributed to the adoption, use or application of the challenged policy or practice in order to determine discriminatory intent. The non-exhaustive list of evidentiary factors include: background of the

[2] *Infra* para. 179.

challenged policy or practice; sequence of events leading up to the challenged policy or practice; departures from normal, procedural sequence (how the challenged policy or practice occurred and was decided on by decisionmakers); pattern of actions that impose greater harm on persons in protected groups (*i.e.,* whether a practice bears more heavily on minority or low-income persons); and awareness of the greater harm (*i.e.,* whether the harm to members in the protected groups was foreseeable to decisionmakers). Where it is determined that the policy or practice was intended to discriminate, the agency evaluates whether the adoption, use or application of the policy or practice would have occurred absent the discrimination. Importantly, evidence of statistical disparity, alone, generally will not satisfy this standard. In the context of section 60506, this approach would likely be most applicable to complaints involving treatment of a large group of persons, including but not limited to deployment, upgrade, and large-scale service matters alleged to have been motivated by prohibited discrimination. The Commission will find a violation of the digital discrimination of access rules where, upon close evaluation of *Arlington Heights* factors, (1) persons in a protected group were denied equal access to broadband internet access services, (2) the challenged conduct would not have occurred absent the discrimination, and (3) the policy or practice in question is not justified by genuine issues of technical or economic feasibility, as outlined above.

142. *When policies or practices are intended to impact persons within the protected group differently than similarly situated persons: McDonnell Douglas standard.* This framework applies when a policy or practice is intended to treat similarly situated persons differently because of a protected status. It is typically utilized when investigating complaints involving a smaller, discrete number of complainants and where there are identifiable comparators. In the context of our rules implementing section 60506, this framework may be utilized for investigating complaints as to selection for benefits, special deals, or even qualification for broadband service.

143. The Commission will investigate three elements under this framework: (1) whether there is differential treatment of similarly situated persons; This element is shown with evidence that persons are within a protected group; they were eligible for service; were treated in an adverse manner; and that persons similarly situated, but not in the protected group, received better treatment. (2) whether there is a legitimate, technical or economic justification for such differential treatment; This element will be investigated by the Commission, and any explanation must be clear and reasonably specific, and fully support a showing that there was a ''legitimate, nondiscriminatory reason for the different treatment.'' And, if so, (3) whether the technical or economic justification for the differential treatment is actually a pretext for prohibited discrimination. Under this element, the Commission will investigate whether any reason given for the challenged action was pretext for discrimination. Under this element, the Commission may weigh whether the reasons given were true; any weaknesses, implausibility, inconsistency or contradictions; and if action taken was contrary to written policy or practice, or was a post-hoc fabrication. As to the second element, the Commission will weigh all available evidence bearing on whether the challenged policy or practice is justified by genuine issues of technical or economic feasibility. The Commission will find a violation of the digital discrimination of access rules where persons in a protected group were treated differently, and (1) there is no legitimate technical or economic justification for the difference in treatment, or (2) the proffered technical or economic justification is determined to be pretext for discrimination.

144. *Investigating allegations that policies and practices differentially impact consumers' access to broadband internet access service on a prohibited basis.* We expect most investigations of possible violations of our rules to concern credible allegations that specific policies or practices have meaningful discriminatory effects and are not justified by genuine issues of technical or economic feasibility. We adopt the elements of proof for disparate impact as established in *Inclusive Communities* in a way that comports with section 60506 and the Commission's investigatory process. Thus, investigations concerning allegations that facially neutral policies or practices have discriminatory effects will involve: (1) the identification of a policy or practice that is causing a disparate impact on a prohibited basis; (2) assessment of whether the policy or practice in question is justified by genuine issues of technical or economic feasibility; and (3) a determination of whether there were reasonably achievable, less discriminatory alternatives. If the Commission determines that a covered entity's policy or practice differentially affects access to broadband service on a prohibited basis and that a less discriminatory alternative was reasonably available and achievable, the policy or practice in question will not be deemed justified by genuine issues of technical or economic feasibility.

145. Under the first element of our disparate impact analysis, the Commission will investigate whether an identified policy or practice of the covered entity is causing the discriminatory effect. We will also investigate the nature of the disparate impact that is being complained about or otherwise brought to our attention. As explained above, we will rely on information provided by the covered entity as well as specified data sources and, where necessary, statistical analyses to assess the extent of the differential impact on access to broadband internet access service. The Commission recognizes that any such differential impact on broadband access must be caused by a specific policy or practice of the entity under investigation.

146. Under the second element of our disparate impact analysis, the Commission will determine whether genuine issues of technical or economic feasibility support and give substantial, legitimate justification for the policy or practice that is being investigated. Third, the Commission will determine whether a less discriminatory alternative policy or practice was reasonably available and achievable and identify any such alternative policy or practice determined to have been reasonably available and achievable. If such an alternative was available to the covered entity, the policy or practice causing the differential impact will not be deemed justified by genuine issues of technical or economic feasibility, and the covered entity will be exposed to liability for digital discrimination of access. Under the Commission's investigative process, the factual and legal bases for any proposed liability determination are set forth in a notice of apparent liability and the respondent has an opportunity to respond to that notice before any final liability determination is made.

147. *Remedies.* Remedying violations of our prohibition on digital discrimination of access will depend on the context and extent of the violation. This requires that remedies be established on a case-by-case basis. To this end, the Commission will bring to bear its full suite of available remedies,

including the possibility of monetary forfeitures.

148. We adopt a presumption of compliance for policies and practices that are in compliance with specific program requirements for the Broadband Equity, Access, and Deployment (BEAD) and Universal Service Fund (USF) high-cost programs. As noted below, we will consider whether other presumptions or safe harbor defenses are warranted going forward, including safe harbors or presumptions of compliance for policies and practices that comply with other federal broadband deployment programs that embody similar equity and nondiscrimination principles. These programs exist to remedy current inequities in broadband deployment and are consistent with section 60506 and our rules adopted today to facilitate equal access to broadband internet service. We will also accept a presumption of compliance for future broadband funding programs that account for digital discrimination of access rules. We decline to expand, however, presumptions or safe harbor defenses beyond these funding programs as some commenters urge. Although T-Mobile correctly identifies that the Commission must take into account issues of technical and economic feasibility, we disagree that for section 60506's language to have ''real meaning,'' the Commission must establish particular safe harbor defenses at this time. The approaches outlined above prove sufficient for protecting the rights of industry participants, and we do not expect that the Commission's self-initiated approach to investigations will inundate industry participants with meritless claims that they must expend substantial resources defending against. We also agree with other commenters that prematurely establishing a comprehensive list of safe harbor defenses may immunize covered entities against legitimate complaints or allegations, without commensurate reasons for doing so. We do, however, recognize that properly developed safe harbors may facilitate regulatory certainty and help focus our enforcement efforts in the future. Therefore, the Commission charges the CEDC with identifying, evaluating and making recommendations with respect to particular safe harbors, rebuttable presumptions or other similar bright-line guardrails distinguishing permissible from impermissible conduct under the rules we adopt today.

149. *Structured Complaint Process.* We decline at this time to adopt a structured formal complaint process for claims of digital discrimination of access. In the *Notice,* we sought comment on whether the Commission should establish a structured complaint process similar to the formal complaint process of section 208 of the Communications Act. CTIA argues that the establishment of such a process would burden both staff at the Commission and the resources of covered entities. However, it is unnecessary for us to opine on these arguments. Instead, we agree with Verizon that, currently, the informal complaint process satisfies the requirements of section 60506 and provides the necessary functionality for the Commission to carry out its duties. Although some commenters encourage the Commission to establish a specific formal complaint process for digital discrimination of access claims, these commenters do not articulate the reasons for its necessity in light of the self-initiated investigatory approach the Commission adopts today. We do not foreclose the possibility of adopting a structured complaint process in the future, however. As the Commission gains experience investigating digital discrimination of access complaints, our approach may evolve, leading us to revisit this issue in the future.

150. As noted above, in order effectively to identify and combat potential violations of digital discrimination of access, the Enforcement Bureau will evaluate information provided to the Commission through the dedicated digital discrimination of access informal complaint pathway or through communications from state, local, or Tribal governments. The Enforcement Bureau, in coordination with the Consumer and Governmental Affairs Bureau, will review this information on a monthly basis and examine trends and geographic or demographic clusters, among other things, in the informal complaint filings to determine whether there is possible discrimination of access based on income level, race, ethnicity, color, religion, or national origin. Relevant evidence pertaining to purported differences in the covered elements of service will be especially probative. Where there is credible evidence suggesting that persons in a protected group were treated differently as the result of a policy or practice, the Enforcement Bureau, in its discretion, will use its authority to conduct investigations; issue Letters of Inquiry and subpoenas; conduct audits; inspect licenses and/or facilities; and collect information. Further, the Enforcement Bureau will use the full range of its enforcement options to enforce compliance, including the possibility of forfeiture penalties.

151. *Voluntary Mediation of Digital Discrimination of Access Complaints.* As part of the monthly review process referenced in the preceding paragraph, Commission staff shall identify particular informal complaints that would be suitable candidates for a staff-mediated resolution process. With regard to such complaints, prior to initiation of an Enforcement Bureau investigation, staff from the Bureau's Market Disputes Resolution Division (which has no involvement in Bureau-initiated investigations) may invite the informal complainant and the covered entity identified in the informal complaint to engage in a voluntary mediation process overseen by Division staff. If all parties are willing to engage in such voluntary mediation, the mediation would follow existing Commission procedures as outlined in Rule 1.737 insofar as practicable. Any resolution reached through such mediation process will be reduced to writing and will be binding only on the parties to the mediation. The parties to the mediation may agree, if they so choose, to disclose the terms of any resolution to the Enforcement Bureau's Investigations and Hearings Division, but will not be required to do so. If the parties choose to disclose the terms of the resolution to the Investigations and Hearings Division, the Enforcement Bureau will consider the terms and scope of the resolution in determining whether to initiate an investigation into the matters raised in the informal complaint. The Enforcement Bureau will not initiate such an investigation until the mediation process has concluded. This mediation process represents an alternative means of bringing speedy and effective resolution to disputes.

152. *Advisory Opinions.* In order to provide greater regulatory certainty and assist covered entities seeking to comply with our rules, we adopt a process to allow any such covered entity to seek an advisory opinion from Commission staff regarding the permissibility of a policy or practice affecting broadband access. The Commission adopted such an advisory opinion process in 2015 in connection with its open internet rules. We find today, as the Commission found in 2015, that an advisory opinion process will promote compliance and provide clarity, guidance, and predictability regarding our rules.

153. Under the process we adopt today, any covered entity may request an advisory opinion regarding the permissibility of its own policies and practices affecting access to broadband

internet access service. As noted in our rules, requests for an advisory opinion may be filed via the Commission's website or with the Office of the Secretary. Requests must be copied to the Chief of the Enforcement Bureau and the Chief of the Investigations and Hearings Division of the Enforcement Bureau. The Commission hereby delegates to the Enforcement Bureau the authority to receive such requests and issue such advisory opinions, and we direct the Enforcement Bureau to coordinate closely with other Bureaus and Offices regarding such advisory opinions. The Enforcement Bureau will have discretion to determine whether to issue an advisory opinion in response to a particular request or group of requests and will inform each requesting entity, in writing, whether the Bureau plans to issue an advisory opinion regarding the matter in question. The Enforcement Bureau shall decline to issue an advisory opinion if the relevant policy or practice is the subject of a pending government investigation or proceeding.

154. Covered entities may submit requests for advisory opinions regarding both current and prospective policies and practices affecting broadband access. However, a request must pertain to a policy or practice that the requesting party is currently utilizing or intends to utilize, rather than a mere possible or hypothetical scenario. And as a general matter, the Enforcement Bureau will prioritize responses regarding prospective policies and practices intended to ensure compliance with our rules. The Enforcement Bureau will also prioritize requests involving substantial questions with no clear Commission precedent and/or subject matter involving significant public interest.

155. When submitting requests, covered entities must include all material information such that Commission staff can make a fully informed determination on the matter. Requesting parties will also be required to certify that factual representations made to the Enforcement Bureau are truthful, accurate, and do not contain material omissions. The Enforcement Bureau will have discretion to request additional information from the requesting entity and from other parties that might have relevant information or be impacted by the request. These might include, for example, impacted consumers or state, local, or Tribal governments.

156. Our advisory opinion process will affect covered entities and the Commission's enforcement actions as described below. First, the process is fully voluntary. No covered entity will be rewarded or penalized for seeking an advisory opinion, and the seeking (or not) of an advisory opinion will not itself influence any enforcement-related decision by the Commission. Second, in an advisory opinion, the Enforcement Bureau will issue a determination of whether or not the policy or practice detailed in the request complies with our rules implementing section 60506. If the Bureau determines that a policy or practice currently in effect violates our rules, it may provide in the opinion that it will not take enforcement action within a designated time period if the policy or practice is promptly corrected. Third, a requesting party may rely on an advisory opinion to the extent that its request fully and accurately describes all material facts and circumstances. Fourth, advisory opinions will be issued without prejudice to the Enforcement Bureau's or the Commission's ability to reconsider the questions involved, and rescind the opinion. Because advisory opinions would be issued by the Enforcement Bureau, they would also be issued without prejudice to the Commission's right to later rescind or revoke the findings. Should the Enforcement Bureau or Commission rescind a previously-issued advisory opinion, the requesting party must promptly discontinue use of the relevant policy or practice in order to remain in compliance with our rules.

157. The Enforcement Bureau will attempt to respond to requests for advisory opinions as efficiently as possible. We decline to establish firm deadlines, however, because we anticipate that the nature, complexity, and magnitude of requests might vary widely. Furthermore, it may take time for Commission staff to request any additional information needed to issue an opinion. Once issued, the Enforcement Bureau will make the advisory opinion available to the public. And to provide further guidance to industry and consumers, the Bureau will also release the initial request and any additional materials deemed necessary to contextualize the opinion. Entities may request confidential treatment of certain information, as provided under Commission rules.

158. *Special Advisor for Equal Broadband Access.* As a further measure to provide assistance to stakeholders regarding the rules and new procedures we adopt today, the Commission shall designate a Special Advisor for Equal Broadband Access within the Wireline Competition Bureau to provide neutral technical assistance to all stakeholders. The Special Advisor will provide consumers and their representatives assistance with: understanding the scope and substance of the rules; understanding the process for filing consumer complaints of digital discrimination of access; understanding what information may best assist the agency in fully assessing such complaints; identifying Commission resources that might be helpful to consumers in determining when digital discrimination of access might have occurred and how it can be challenged; addressing questions regarding the voluntary mediation of digital discrimination of access complaints; addressing questions regarding the advisory opinion process outlined above; and interfacing with various Commission components regarding access to broadband internet access service. The Special Advisor will likewise provide industry participants and their representatives assistance with: understanding the scope and substances of the rules; understanding the process for responding to complaints of digital discrimination of access; understanding what information may best assist the agency in fully assessing such responses; identifying Commission resources that might be helpful to industry participants in complying with the rules we adopt today; questions regarding the voluntary mediation of digital discrimination of access complaints; questions regarding seeking advisory opinions regarding policies or practices affecting access to broadband internet access service; and interfacing with various Commission components regarding access to broadband internet access service. The Special Advisor may be designated other responsibilities associated with the digital discrimination of access rules we adopt today and other matters relating to our efforts to ensure equal access to broadband internet access service.

159. *State and Local Enforcement and Private Rights of Action.* We decline at this time to authorize state and local enforcement of our rules, as some commenters urge. As explained above, the Commission is taking a self-initiated approach to investigations of digital discrimination of access. By doing so, the Commission can best establish the contours of what constitutes a violation of our prohibition in a consistent manner. We also decline at this time to create a private right of action, as we asked about in the *NPRM,* and thus find it unnecessary to opine at this time about our authority to do so.

Differential Impact

160. We find that in determining when consumers' access to broadband internet service is ''differentially

impacted,'' whether intentionally or not, we must account for all comparable elements of service quality, terms and conditions. Consistent with our discussion above regarding the elements of service covered by our rules, we may compare service availability, service quality, and the terms and conditions of service as between different geographic areas and communities to determine whether digital discrimination of access has occurred. This may include all technical and non-technical aspects of service in a given area. We similarly provide ourselves the flexibility to consider any comparable geographic region that may be relevant to an alleged claim of digital discrimination of access. Finally, the data we use to determine when a policy or practice differentially impacts consumers' access to broadband service will encompass data both from within the Commission and from any outside sources that we consider relevant to evaluating the issues at hand. Contrary to the concerns expressed by some commenters, we do not expect that our digital discrimination of access rules will require covered entities to collect any new data from their customers in order to determine the differential impacts of their policies and practices. Covered entities should be able to make those determinations based solely on data from the U.S. Census Bureau.

161. We find this scope of inquiry necessary to meet section 60506's equal access goals. First, we agree with commenters that we must have a flexible and non-exhaustive approach to comparing broadband internet access service, as quality standards and the criteria to measure quality will change over time. Second, adopting a comprehensive approach is necessary to meet section 60506's aims regarding equal access because ''a series of terms and conditions may have [cumulative effects on access] even when each may be only slightly onerous on its own.'' In other words, failing to have such a flexible approach could lead to our digital discrimination of access rules undermining Congress's intent for enacting section 60506 by ''exacerbat[ing] digital discrimination [of access] rather than eliminating it.'' Finally, as the record reflects that digital discrimination of access requires assessing a myriad fact patterns, including various technological and non-technological aspects of broadband service, the unique challenges that covered entities face to deploy to certain areas, and that broadband use may vary within local communities, we must adopt a scope of comparability that can holistically assess each claim. This analytical approach is consistent with the goal to ensure that ''all people'' benefit from broadband, including those in historically disadvantaged, Tribal, and rural communities. Our assessment of whether an ''offered service'' is of comparable quality to that available to other communities will turn on the *capabilities* of the service rather than the particular technology through which the service is offered. We will focus our analysis on whether the consumer has the equal opportunity to obtain and utilize broadband internet access service of comparable quality on comparable terms and conditions. In this regard, we are mindful that ''comparable'' does not mean ''identical.''

162. Our approach to comparability is consistent with established civil rights law. As explained, we will require that covered entities' policies and practices cause the identified disparities, consistent with the reasoning of *Inclusive Communities.* We disagree with T-Mobile that the ''robust causality requirement simply is not workable in the broadband context[,]'' as our flexible approach will allow to consider the factors that go into a provider's investment decisions. As these matters are so fact-driven, our inquiry will also be on a case-by-case basis, consistent both with longstanding precedent in civil rights law and our approach to determining feasibility.

163. We disagree with commenters asserting that a determination of digital discrimination of access need not require the ''robust causality'' outlined in *Inclusive Communities.* Some commenters argue that we should require only a showing of statistical disparity without any evidence that the challenged policies or practices caused the disparity. We disagree. Instead, we agree with those commenters asserting, consistent with *Inclusive Communities,* that sound disparate impact analysis requires a determination that the challenged policies and practices are a contributing cause of the identified differential in access.

Comparing Technical Terms of Service

164. We find that our flexible approach to comparability has several advantages when comparing the technical aspects of broadband. First, this approach is consistent with our definition of covered aspects of service. Second, this flexible approach will allow us to account for the ''technical realities of provisioning'' broadband when comparing technological aspects of services, such as network degradation and upgrades, by encompassing variables that can explain why network performance may be better or worse during certain periods. Third, it will also provide for comparing technical aspects of service that are present in certain technologies and not others, such as wireless service. Finally, this approach will allow our comparability analysis to adapt as technological preferences change over time and account for substitutability.

165. The record in this proceeding regarding the ''substitutability'' (and therefore comparability) of broadband service provided through different technologies is mixed. While some commenters argue that the Commission's focus should be on whether the services are comparable in practical terms because section 60506 is ''technology neutral,'' Public Knowledge cautions that ''there are likely to be significant technical variations between different technologies (*e.g.,* wireline vs wireless), such that the default assumption should be that even with stated similarities a service that employs different technology is not comparable.'' Commenters also disagree on how substitutability should be considered with regard to emerging technologies, as some argue that service provided over fiber lacks a substitute and others suggest the opposite. The range of views on the record counsels that the Commission should take an approach to comparing technical aspects of service that can accommodate the unique considerations of each alleged instance of digital discrimination of access. The holistic and flexible approach to comparability and substitutability we describe today is consistent with that aim.

166. We decline to establish at this time a prescriptive range or standard for comparing technical aspects of service. We are not persuaded by commenters who suggest that we must take a prescriptive approach to comparing technical aspects of service because greater certainty is necessary to promote deployment. There are simply too many potentially relevant technical variables to each claim to suggest that a prescriptive approach could be practically administered or complied with. We agree with commenters that the varying technologies and services used to deliver broadband ''have different natures and capabilities and should thus be evaluated independently using relevant performance metrics.'' Indeed, the court in *Orloff* itself pointed out that wireless carriers, even in a competitive market, still ''cannot 'decline to serve any particular demographic group (*e.g.,* customers who are of a certain race or income bracket).' '' The ability of wireless

carriers generally to provide sales concessions to some customers and not others without being held to have engaged in ''unjust and unreasonable discrimination'' within the meaning of sections 201 and 202 of the Communications Act does not mean that broadband providers may discriminate between customers on the basis of the characteristics protected by section 60506. Adding to this complexity, we acknowledge commenters' perspective that, while service interruptions may occasionally occur due to events such as network outages or network maintenance, significant or ''chronic'' network outages are red flags for possible digital discrimination of access. Our flexible approach will provide for these considerations while avoiding a situation where our technical comparability analysis becomes outdated, the range or scope of comparability becomes too broad or narrow, or our analysis is otherwise ill-suited for the service, service elements, or service terms being compared. We similarly disagree with commenters who assert that standards are necessary to ensure that our rules adequately protect consumers, as our flexible approach does so by ''future proofing'' our rules as standards change over time.

167. We decline to require network performance testing at this time. As the record is mixed on the issue and such testing is not necessary to accomplish our immediate objectives, we find that adopting a network testing requirement at this time would be premature. While Public Knowledge argues we should adopt network testing requirements similar to those in the universal service context, USTelecom opposes network testing because it is ''unjustified as a matter of law, unnecessary, and unduly burdensome.''

Comparing Non-Technical Terms of Service

168. We find that our flexible approach to comparability likewise has several advantages for comparing non-technical elements of broadband service. First, this approach is consistent with the inclusive scope of our definition of covered elements of service. Second, this flexible approach allows us to assess holistically whether and how non-technical aspects of service may vary based on protected status. Third, allowing comparison of a broad range of services, service elements, and terms of service allows the Commission to evaluate non-technical terms of service across covered entities.

169. We decline to establish a prescriptive standard to compare non-technical aspects of service. Commenters suggest that the Commission should provide different comparability standards when comparing non-technical aspects of service offered by the same covered entity and non-technical aspects of service offered by different covered entities. Commenters also suggest that for services offered by the same covered entity, we should establish that all customer groups in the same area must have the opportunity to receive the same service on the same terms and conditions. Adopting this assumption, however, would not give proper weight to the feasibility analysis we adopt for claims of digital discrimination of access. We agree that ''comparing across providers on non-technical factors is considerably more challenging'' because ''there are compelling competition reasons for different providers to have different terms of service or approaches to customer service.'' Nevertheless, our more flexible approach of considering all available information will allow the Commission to determine whether non-technical aspects of service across different covered entities in certain circumstances will provide useful evidence of reasonably available alternative practices.

Geographic Comparability

170. Section 60506(a)(2) defines ''equal access'' as the equal opportunity to subscribe to an offered service of comparable service ''in a given area . . . .'' Thus, when determining whether challenged policies and practices differentially impact access to broadband based on the listed characteristics, to the greatest extent possible, we must compare the service quality and terms and conditions of service in defined geographic areas that are appropriate and reasonably comparable in all respects other than the demographic characteristic(s) giving rise to the digital discrimination of access claim.

171. We find that we must adopt a broad and flexible approach to assess geographic comparability in this context. This is consistent with our approach to comparing technical and non-technical aspects of service. And, as Congress did not define ''a given area'' in section 60506(a)(2) nor anywhere else in the statute, we agree with commenters that we should determine the appropriate ''given area'' for an alleged instance of digital discrimination of access on a case-by-case basis. The record reflects a variety of suggestions and relevant considerations for determining an appropriate geographic area for comparison of service quality and terms, providing that a flexible, case-by-case approach is both necessary and appropriate. First, commenters suggested a variety of geographic areas may be appropriate depending on the context, including the Nation as a whole, states, counties, metropolitan statistical areas, and census blocks, among others. Second, the record reflects that there are a variety of factors to consider to determine what area is appropriate to analyze a digital discrimination of access claim. For example, with respect to covered entities in particular, the record reflects that the geographic area that is appropriate may differ depending on the type of covered entity, such as a cable operator operating under a franchise agreement or an ILEC operating under a license area; the covered entity's size; or the type of broadband technology used to provide the service, such as fiber to the home or fixed wireless service. Third, though we find that we should compare similar geographic areas to assess claims of digital discrimination of access, the record also includes a variety of suggestions on how we should determine what the relevant geographic area is. For example, commenters suggest that we consider five factors to determine the correct area, while others generally suggest we use relevant geographic comparators, such as how close areas are to each other, changes in terrain, the cost of deployment, and whether the given area is rural or urban. As such, we will evaluate each claim holistically and determine what ''given area'' is appropriate based on the facts presented. Finally, our flexible, case-by-case approach to determining geographic comparability is consistent with our approach to determining feasibility. In both determinations, we adopt a flexible approach to account for the challenges of providing service to particular geographic areas, such as topography, population density, and other potential technical and economic barriers to providing broadband service.

172. We agree with Verizon that those filing digital discrimination of access complaints should, if possible, identify the given area where the alleged digital discrimination of access occurs. But given that many informal complaints may be filed by members of the public based on their own experiences with broadband access and have little or no information as to how widely their experiences might be shared by others, we will not require precision in this regard. If the informal complaint gives

the Commission enough information to determine the nature of the alleged violation and where the alleged violation occurred, that may be sufficient for the Commission to determine whether further inquiry is warranted. Moreover, we will not, as some have suggested, limit our investigations to the four corners of the informal complaint, examining only the policies and practices and the geographic areas identified therein. Rather, the informal complaint will be used as a starting point, a basis for determining whether to seek further information from the complainant, require a response from the covered entity involved, determine whether there are similar complaints forming a pattern, or take some other appropriate action. We understand that many of the comments suggesting that we apply strict ''pleading'' standards to complaints of digital discrimination of access are premised on the assumption (or possibility) that the Commission would adopt a formal complaint process akin to section 208 of the Communications Act and our rules implementing that section. As we have elected not to adopt such a formal complaint procedure at this time, we will provide maximum flexibility to persons filing informal complaints and will review such informal complaints as liberally and generously as possible to achieve the purposes of the statute as expeditiously as possible.

Data To Analyze Differential Impact

173. We will avail ourselves of all relevant Commission and external data collections to help us evaluate when access to broadband has been differentially impacted based on a protected characteristic. As in the record compiled in response to the *Notice of Inquiry,* commenters to the *NPRM* highlighted various studies and provided a robust debate as to whether the studies were well grounded and whether they agreed with their conclusions. For example, though some commenters continue to argue that certain studies remain convincing examples of digital discrimination of access, others argue that they downplay or ignore important facts or have been successfully rebutted. Commenters also cite a variety of other studies or sources of data as evidence that may help demonstrate or refute that digital discrimination of access actually exists. As the record is mixed and does not conclusively indicate that some sources of data are more robust or helpful than others, we will evaluate all data relevant to a claim of digital discrimination of access on a case-by-case basis, including all Commission and external data sources and studies. Moreover, as to the existence (or not) of digital discrimination of access, we simply note that Congress directed the Commission to adopt rules on a short deadline to ''prevent'' and identify steps to ''eliminate'' digital discrimination of access. Arguments that such discrimination does not occur or does not exist should have been directed to Congress. The Commission's charge is to execute on the mandate we were given by Congress, and we intend to do that.

174. With particular respect to Commission data collections, the record reflects there could be many productive ways for us to use them both individually and in conjunction with other sources of data. Commenters suggest, for example, that we could analyze data from Commission broadband maps, broadband consumer labels, the Affordable Connectivity Program, the Lifeline program, or the Consumer Complaint Center to identify possible violations of our rules, identify possible subjects of investigation, or highlight existing disparities in deployment. Commission data collections coupled with data collected outside the Commission could also provide helpful insight. For example, comments advise that cross referencing and overlaying various data sets, using state broadband maps or Census Bureau information in conjunction with Commission maps, or comparing information submitted to the Commission, state, or local agencies with information a covered entity publishes regarding their service, could also help the Commission assess digital discrimination of access claims.

175. The Commission may also require new data collection in the future that could be helpful to analyzing comparability. As explained in the accompanying *Further Notice,* we propose to make new data available through an annual supplement to the BDC. Our proposed annual supplement would report (on a state-by-state basis) all major deployment, upgrade and maintenance projects completed or substantially completed in the preceding calendar year, including the nature and size of the project and identification of the communities served by the project, and could be useful to our comparability analysis if adopted. We also propose requiring covered entities to implement internal compliance programs that would require covered entities to identify the communities served by recently completed, pending and planned major projects, conduct comparability analysis, and identify whether relevant policies and practices are differentially impacting consumers' access to broadband. This would require covered entities to conduct project evaluations, analyze their policies and practices, and conduct other internal monitoring and auditing that could help remove ''invisible'' impediments to equal broadband access.

176. We decline at this time to modify current Commission data collections or undertake new data collections. Various commenters suggest that we modify Commission data collections to aid our analysis of possible digital discrimination of access, such as by undertaking a new data collection under the Affordable Connectivity Program to allow for disaggregation of program participants by demographic group, or modifying broadband maps so consumers could more easily determine if they have ''comparable'' broadband service at their street address. Commenters also suggest we should collect new data to compare advertised and charged pricing. Since the Commission currently has at its disposal a number of data collections and potential data sources that may assist in our analysis of digital discrimination of access claims, it is unclear whether a new data collection's burdens would outweigh its potential benefits. As we gain greater experience investigating digital discrimination of access claims, we will evaluate the adequacy of current data collections and other data sources and will determine whether new data collections or modifications of existing data collections might be warranted. We note that commenters disagree as to the authority that broadband consumer labels provide for imposing a new BDC.

Other Issues

177. At this time, we decline to take action in the other policy areas identified in the record where there is possible intersection with the issues we address in this proceeding. In the *NPRM,* we invited comment on various record proposals, including potential action in different Commission proceedings, which could potentially help the Commission fulfill our statutory mandate. We received numerous proposals that address action we can take on Tribal lands, possible outreach efforts, and organizational changes we should make to promote our efforts to combat digital discrimination of access. In addition, commenters suggested further action related to broadband service in multiple tenant environments (MTEs), spectrum availability, spectrum policy, the Affordable Connectivity Program, other Commission funding programs, the

Commission's broadband speed benchmark, the BDC maps, and various suggestions that commenters argue would aid infrastructure deployment, such as revising the Commission's rules for small wireless facilities, pole attachments, section 214 discontinuances, and cable franchising, and addressing other local and federal regulatory barriers. The Commission's primary focus at this time is to implement effective rules to address digital discrimination of access within the deadline set by Congress. However, we will continue to consider the thoughtful proposals on the record that are not addressed in other sections of this *Report and Order* or in the *Further Notice.* Our decision to refrain from taking further steps today in those proposals does not reflect any policy or legal conclusions regarding these matters. Some commenters, in addition to advocating for the Commission to expand upon the listed characteristics Congress included in section 60506(b), ask that the Commission more broadly address concerns over exposure to radiofrequency energy. This topic is outside the scope of the current proceeding, and we refer commenters to the Commission's website for more information.

178. Although we are not adopting any other record proposals at this time, we note that states and localities can rely on several resources made available to them to address digital equity, such as the Infrastructure Act's broadband funding for states, the National Broadband Map, and the Broadband Funding Map. First, we recommend that states and localities tap in fully to the funding allocated to states and localities to address broadband equity. On June 26, 2023, NTIA announced how it allocated funding to all 50 states, the District of Columbia, and five U.S. territories to deploy affordable, reliable high-speed internet service to everyone in America. States and other jurisdictions will use funding from the Infrastructure Act's $42.45 billion Broadband Equity, Access, and Deployment (BEAD) program to administer grant programs within their borders. The BEAD funding will be used to deploy or upgrade broadband networks to ensure that everyone has access to reliable, affordable, high-speed internet service. Once deployment goals are met, any remaining funding can be used to pursue eligible access-, adoption-, and equity-related uses. We strongly encourage states and other jurisdictions to make full use of the available BEAD funding in order to expand broadband access in hard-to-build areas, increase broadband affordability, and strengthen digital literacy within their respective borders. While these issues are distinct from digital discrimination of access as we have defined it, full utilization of BEAD funding might reduce the instances in which consumers believe they are experiencing digital discrimination of access and thus reduce the burdens on industry participants and the Commission in addressing digital discrimination of access claims.

179. Second, in addition to the CEDC recommendations discussed below, we recommend that states and localities utilize the National Broadband Map to identify unserved and underserved communities. We find, based on the record, that states and localities could benefit from available resources to help them identify unserved and underserved communities and develop solutions to address digital discrimination of access. The National Broadband Map displays where broadband internet services are and are not available across the country. The map is one step in an ongoing, iterative process that will involve the submission of data by providers, challenges from third parties and the public, and verifications and audits by the Commission. The maps produced through this process will continually improve and refine the broadband availability data relied upon by the Commission, other government agencies, and the public, as required by the Broadband DATA Act. An accurate map will help identify the unserved and underserved communities most in need of expanded access to broadband internet access service.

180. Third, we recommend that states and localities use the Broadband Funding Map to gain insight into the broadband infrastructure deployment projects funded by the Federal government throughout the United States and Territories. The Broadband Funding Map overlays the availability data reported on the National Broadband Map with the funding data to show locations receiving federal program support. Finally, we decline at this time to establish an Office of Civil Rights within the Commission, as several commenters have urged us to do. We recognize the potential benefits of establishing such an office, however, and therefore seek further focused comment in a *Further Notice.*

State and Local Model Policies and Best Practices

181. As proposed in the *NPRM,* we adopt as guidelines for states and localities the best practices to prevent digital discrimination and promote digital equity recommended by the Communications Equity and Diversity Council (CEDC). Section 60506(d) of the Infrastructure Act directs the Commission to ''develop model policies and best practices that can be adopted by states and localities to ensure that broadband internet access service providers do not engage in digital discrimination.'' To help fulfill this direction, in December 2021, Chairwoman Rosenworcel tasked the CEDC with issuing recommendations on the subjects specified in section 60506(d). In furtherance of that mission, the CEDC ''took the lead in facilitating interviews, public events, and town hall meetings with multiple stakeholders, from community leaders to industry experts, state broadband directors, foundations, school district leaders, HBCUs, faith-based organizations, small-, minority-, and women-business owners, concerned citizens, and representatives of historically marginalized groups.'' The CEDC members ''actively sought out the perspectives of the aforementioned groups and listened attentively to their experiences, challenges and aspirations.'' More specifically, the CEDC's Digital Empowerment and Inclusion (DEI) Working Group issued a report (the CEDC report) recommending both (1) model policies and best practices to prevent digital discrimination by broadband providers, and (2) best practices to advance digital equity for states and localities. On November 7, 2022, the members of the full CEDC voted unanimously in favor of adopting the report for submission to the Commission. We now adopt both sets of recommendations as guidelines for states and localities, in fulfillment of section 60506(d), while emphasizing that our action does not limit states and localities from taking additional steps to prevent and eliminate digital discrimination of access beyond those set forth in the CEDC report and adopted in this *Report and Order.*

182. As we explained in the *NPRM,* the six CEDC recommendations in its report ''Model Policies and Best Practices to Prevent Digital Discrimination by ISPs'' reflect the perspective of the industry, public interest stakeholders, local government representatives, and others. We conclude that adopting these consensus recommendations will be effective in addressing digital discrimination of access at the state and local level. Additionally, the thirteen recommendations in the report's ''Best Practices to Advance Digital Equity for

State and Localities'' reflect the consensus of industry and public interest stakeholders, and we find that they can serve as an effective framework for states and localities to advance digital equity.

183. We strongly encourage states and localities to implement these recommendations as a starting point, as we find that they can serve as an effective framework to advance digital equity. The record reflects widespread support for adopting both sets of recommendations. We agree with the Texas Coalition of Cities that the CEDC report's ''Best Practices to Advance Digital Equity for State and Localities'' recommendations appropriately focus on broadband and device programs, disseminate information and increase participation in federal broadband affordability programs, integrate existing social service supports with broadband services and create digital navigator programs where feasible. And as the U.S. Chamber of Commerce highlights, states and localities can adopt these model policies and practices at their discretion. Local Governments cautioned that while we should adopt the CEDC Report recommendations, we should also recognize the potential limits of states and local authorities to adopt those policies, in-part due to a lack of resources. While states and localities may still face potential limitations in implementing these recommendations, we envision that the aforementioned funding will be a good starting point for jurisdictions to begin taking the necessary steps to prevent and eliminate digital discrimination of access. Lastly, as noted by USTelecom, our approach affords us the opportunity to study the effects of implementation of those best practices by states and localities and determine whether further action on this front is warranted. We acknowledge that some states and localities may currently lack the necessary resources or authority to adopt and implement the CEDC report recommendations, but we note that the recommendations can be adopted and implemented at any time at the discretion of the governmental entity involved, such as when additional authority is provided or when additional resources are made available.

184. We disagree with arguments submitted by several commenters that we should refrain from adopting the recommendations in the CEDC report at this time in part due to the limited representation of local and state officials in the CEDC. We note that the CEDC's working group members did include some state and local representation and its Report was unanimously adopted. In addition, the CEDC members were diligent in their research, and they interviewed several local and state officials to develop their recommendations. The members conducted more than 30 virtual interviews and relied upon data and research by scholars, organizations, and state and local governments that have driven digital equity and inclusion scholarship. The members also analyzed research publications and other publicly available documents issued by a variety of government agencies, academics and think tanks, and advocacy organizations to help inform their development of best practices and model policies to prevent digital discrimination and to promote digital equity. Among other sources, members reviewed federal guidance programs and broadband adoption initiatives, including partnerships between state and local governments and internet service providers in response to the pandemic. While we understand the concerns with the limited representation from state and local governments, we find unpersuasive assertions from some commenters that the recommendations from the CEDC report therefore should not be adopted on this basis. The methodology used to develop both sets of recommendations took into consideration the input and expertise from states and localities to better understand their experiences and lessons learned so that other jurisdictions might adopt and implement their successful strategies and methodologies and avoid their mistakes. We encourage state and local officials responsible for broadband expansion efforts to monitor the proceeding and engage with the rechartered CEDC.

Procedural Matters

185. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Report and Order.*

186. *Paperwork Reduction Act.* This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. All such new or modified information collection requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. In this document, we describe several steps we have taken to minimize the information collection burdens on small entities.

187. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

188. *Contact Person.* For additional information on this proceeding, contact the Wireline Competition Bureau at *WCBDigDiscrimInfo@fcc.gov*.

Ordering Clauses

189. Accordingly, *it is ordered,* pursuant to sections 1, 2, 4(i) and (j), 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 303(r), and section 60506 of the Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429, 1245–46 (2021), codified at 47 U.S.C. 1754, that this *Report and Order is adopted* and parts 0, 1, and 16 of the Commission's Rules, 47 CFR parts 0, 1, and 16 *are amended* as set forth in Appendix A. The *Report and Order* shall become effective 60 days after publication in the **Federal Register**, except that the amendments to 47 CFR 1.717, as amended in Appendix A, will not become effective until the Office of Management and Budget completes review of any information collection requirements in this *Report and Order* that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act. The Commission directs the Wireline Competition Bureau to announce the effective date for 47 CFR 1.717 by subsequent Public Notice.

190. *It is further ordered* that the Commission's Office of the Secretary *shall send* a copy of this *Report and Order,* including the Final Regulatory

Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

191. *It is further ordered* that the Office of the Managing Director, Performance Program Management, *shall send* a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Final Regulatory Flexibility Analysis

Need for, and Objectives of, the ''Second Report and Order''

192. The Report and Order takes an important step to promote equal access to broadband for all people in the United States by adopting rules pursuant to section 60506 of the Infrastructure Investment and Jobs Act (Infrastructure Act) that establish a balanced framework to facilitate equal access to broadband internet service by preventing digital discrimination of access. Many households in the United States lack equal access to broadband, with disparities that cross income, demographic, and geographic lines, including rural and tribal areas. Among households with broadband access, mid-sized communities, urban, and rural areas are all impacted by inferior service offerings. The *Report and Order* establishes that a policy or practice will violate the Commission's prohibition on digital discrimination of access if it discriminates based on one of section 60506's listed characteristics (either by intent or in effect), and creates a process to report incidents of digital discrimination and determine whether a violation has occurred.

193. First, the *Report and Order* defines ''digital discrimination of access'' as ''Policies or practices, not justified by genuine issues of technical or economic feasibility, that (1) differentially impact consumers' access to broadband internet access service based on their income level, race, ethnicity, color, religion or national origin, or (2) are intended to have such differential impact.'' Second, the *Report and Order,* prohibits ''digital discrimination of access.'' Third, it establishes the scope of covered entities, consumers, and services subject to the prohibition. Fourth, the *Report and Order* revises the Commission's informal consumer complaint process to: (1) add a dedicated pathway for digital discrimination of access complaints; (2) collect voluntary demographic information from filers who submit digital discrimination of access complaints; and (3) establish a clear pathway for organizations to submit digital discrimination of access complaints. Fifth, it amends certain existing Commission enforcement rules: Rule 1.80, to reference the provisions of section 60506 in addition to those of the Communications Act and other statutes, and Rule 0.111 to reflect the Enforcement Bureau's direction to investigate claims of digital discrimination of access and make recommendations as to potential violations and penalties. Finally, the *Report and Order* adopts, as guidelines, the Communications Equity and Diversity Council's (CEDC's) model policies and best practices to prevent digital discrimination by broadband providers, and best practices to advance digital equity for states, localities, Tribal governments, and United States territories.

Summary of Significant Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analysis (IRFA)

194. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA or otherwise raised issues addressing the specific concerns of, and impact on small entities. Nonetheless, the Commission considered the potential impact of the rules proposed in the IRFA on small entities and took steps where appropriate and feasible to reduce the compliance burden for small entities in order to reduce the economic impact of the rules enacted herein on such entities.

Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

195. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

196. 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 rules adopted herein. 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.

197. *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.

198. 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. 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.

199. 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.''

200. *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.

201. 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.

202. *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. 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.

203. *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. 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.

204. *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.

205. *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. 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. 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.

206. *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 a 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 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 115

providers that reported they were engaged in the provision of other toll services. Of these providers, the Commission estimates that 113 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.

207. *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.

208. *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 $38.5 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 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 71 providers that reported they were engaged in the provision of satellite telecommunications services. Of these providers, the Commission estimates that approximately 48 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, a little more than of these providers can be considered small entities.

209. *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.

210. *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.

211. *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

212. The *Report and Order* adopts rules defining digital discrimination making it unlawful for any broadband provider or covered entity to adopt, implement or utilize policies or practices, not justified by genuine issues of technical or economic feasibility, that differentially impact consumers' access to broadband internet access service based on their income level, race, ethnicity, color, religion, or national origin or are intended to have such differential impact. When investigating claims of digital discrimination, small entities will need to gather and provide information needed by the Commission

to assess claims of technical or economic feasibility, and prove by a preponderance of the evidence that the policy or practice in question is justified by genuine issues of technical or economic feasibility. This may involve additional staff time, possibly by engineering and accounting professionals that can speak to technical or economic issues.

213. In reviewing the record, commenters expressed concern about obstacles faced by small providers. However, we adopt a flexible approach to assessing the technical and economic feasibility of a covered entity's practices, and will review alleged digital discrimination of access on a case-by-case basis. The Commission does not have sufficient information on the record to quantify the cost of compliance for small entities. The Commission, however, anticipates the approaches it has taken to implement the requirements will have minimal implications because its approach to investigations accounts for variations among provider types and industry, and will tailor its interactions with such small entities to account for these burdens.

Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

214. The RFA requires an agency to provide ''a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.''

215. The *Report and Order* establishes a balanced framework to facilitate equal access to broadband internet service by preventing digital discrimination of access to that service. These rules adopted in the *Report and Order* address business practices and policies that impede equal access to broadband, take into account issues of technical and economic feasibility that pose serious challenges to full achievement of the equal access objective, and consider impacts on small entities. The Commission considered small business interests in including ''genuine issues of technical or economic feasibility'' in the definition of ''digital discrimination of access.'' The Commission also acknowledged that the technical and economic challenges that providers face in deploying and serving rural and urban areas can vary greatly. The Commission's approach to technical and economic feasibility accounts for variations among provider types and industries. Moreover, the CEDC conducted outreach to small-, minority-, and women- businesses in developing the model policies and best practices to prevent digital discrimination of access adopted by the *Report and Order.*

216. In reaching its final conclusions in this proceeding, the Commission considered a number of alternatives, such as addressing digital discrimination of access issues raised either in other proceedings, or in the current record, that could potentially impact small businesses. For example, we considered whether to establish an Office of Civil Rights within the Commission, as several commenters have urged us to do, however we will make this assessment outside the scope of this proceeding as a matter of internal structure, organization, and staffing. Additionally, the Commission determined that, at this time, its primary focus is to implement effective rules to address digital discrimination of access by the statutory deadline set by Congress, but will continue to consider the thoughtful proposals not addressed in other sections of the *Report and Order.* We also considered proposals to modify current Commission data collections to accept new data or otherwise undertake new data collections. However, it is currently unclear whether a new data collection's burdens would outweigh its potential benefits, because the Commission has access to a number of data collections and potential data sources that may assist in our analysis of digital discrimination of access claims.

217. We considered additional alternatives that may impact small entities, including how we define terms used in our digital discrimination analysis. For example, we declined to adopt specific standards or definitions for different types of providers because we want these rules to maintain the flexibility needed to address providers of various sizes, difference technologies, and the unique circumstances of each covered entity, including small businesses. We also declined proposals to define digital discrimination in a manner that considers differences in the profitability of serving one area over another, because we weigh profitability separately from technical or economic feasibility. We did not include issues pertaining to personal data that is processed by an algorithm in the definition of digital discrimination because section 60506 is not directly related to those concerns. To eliminate potential loopholes in complying with these rules, we retain the term ''genuine'' as part of our definition of digital discrimination to ensure that covered entities cannot rely upon unsupported assertions of technical or economic feasibility to refute claims of digital discrimination of access.

Report to Congress

218. The Commission will send a copy of the *Report and Order,* including this FRFA, in a report to Congress pursuant to the Congressional Review Act.[3] In addition, the Commission will send a copy of the *Report and Order,* including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

List of Subjects in 47 CFR Parts 0, 1, and 16

Communications, Telecommunications, Organizations and Functions, Equal Access to Justice, Investigations, Penalties, Digital Discrimination, Equal access.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0, 1, and 16 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. Effective March 22, 2024, the authority citation for part 0 is revised to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 409, and 1754, unless otherwise noted.

■ 2. Effective March 22, 2024, amend § 0.111 by adding paragraph (a)(30) to read as follows:

§ 0.111 Functions of the Bureau.

(a) * * *

(30) Resolve complaints alleging violations of digital discrimination of access pursuant to 47 CFR part 16.

* * * * *

PART 1—PRACTICE AND PROCEDURE

■ 3. Effective March 22, 2024, the authority citation for part 1 is revised to read as follows:

[3] *Id.* section 801(a)(1)(A).

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note; 47 U.S.C. 1754, unless otherwise noted.

■ 4. Effective March 22, 2024, amend § 1.80 by adding paragraph (a)(8) to read as follows:

§ 1.80 Forfeiture proceedings.

(a) * * *

(8) Violated section 60506 of the Infrastructure and Jobs Act of 2021 or 47 CFR part 16.

* * * * *

■ 5. Delayed indefinitely, amend § 1.717 by adding ‘‘, except for digital discrimination of access informal complaints filed pursuant to 47 CFR part 16’’ after ‘‘in accordance with § 1.721’’ and before the period in the last sentence and by adding a new last sentence.

The addition reads as follows:

§ 1.717 Procedure.

* * * In addition, for the purpose of informal complaints submitted under 47 CFR part 16, the Commission's informal complaint procedures will apply to all covered entities as defined in 47 CFR 16.2.

■ 6. Effective March 22, 2024, add part 16 to read as follows:

PART 16—DIGITAL DISCRIMINATION OF ACCESS

Sec.

16.1 Purpose.
16.2 Definitions.
16.3 Digital discrimination of access prohibited.
16.4 Findings of discrimination.
16.5 Technical and economic feasibility.
16.6 Enforcement.
16.7 Advisory opinions.

Authority: 47 U.S.C. 1754, unless otherwise noted.

§ 16.1 Purpose.

The purpose of this part is to implement section 60506 of the Infrastructure Investment and Jobs Act, 135 Stat. 429 (2021) (Infrastructure Act) that requires the Commission to adopt rules to facilitate equal access to broadband internet access service, taking into account the issues of technical and economic feasibility presented by that objective, including:

(a) Preventing digital discrimination of access based on income level, race, ethnicity, color, religion, or national origin; and

(b) Identifying necessary steps for the Commission to take to eliminate discrimination described in this part.

§ 16.2 Definitions.

Broadband internet access service is defined by § 8.1(b) of this subchapter.

Broadband provider is defined by § 54.1600(b) of this chapter.

Consumer includes current and potential subscribers, individual persons, groups of persons, individual organizations, and groups of organizations having the capacity to subscribe to and receive broadband internet access service.

Covered entity includes broadband internet access service providers and entities that provide services that facilitate and affect consumer access to broadband internet access service, including but not limited to:

(1) Broadband internet access service providers;

(2) Contractors retained by, or entities working through partnership agreements or other business arrangements with, broadband internet access service providers;

(3) Entities facilitating or involved in the provision of broadband internet access service;

(4) Entities maintaining and upgrading network infrastructure; and,

(5) Entities that otherwise affect consumer access to broadband internet access service.

Covered elements of service is defined as any components of service quality or terms and conditions on which broadband internet access service is provided. The definition includes, but is not limited to:

(1) Deployment of broadband infrastructure, network upgrades, and network maintenance;

(2) Service quality components and the terms and conditions on which broadband internet access service is provided, including but not limited to speeds, capacities, latency, data caps, throttling, pricing, promotional rates, imposition of late fees, opportunity for equipment rental, installation time, contract renewal terms, service termination terms, and use of customer credit and account history;

(3) Marketing, advertisement, and outreach; and

(4) Technical service, onsite service, and other provision of customer service.

Covered services is defined as broadband internet access service by § 8.1(b) of this subchapter.

Digital discrimination of access means policies or practices, not justified by genuine issues of technical or economic feasibility, that differentially impact consumers' access to broadband internet access service based on their income level, race, ethnicity, color, religion, or national origin or are intended to have such differential impact.

Economically feasible means reasonably achievable as evidenced by prior success by covered entities under similar circumstances or demonstrated new economic conditions clearly indicating that the policy or practice in question may reasonably be adopted, implemented, and utilized.

Equal access means the opportunity to subscribe to an offered service that provides comparable speeds, capacity, latency, and other quality of service metrics in a given area, for comparable terms and conditions.

Subscriber is defined as a subscriber to broadband internet access service as defined as in § 8.1(b) of this subchapter.

Technically feasible means reasonably achievable as evidenced by prior success by covered entities under similar circumstances or demonstrated technological advances clearly indicating that the policy or practice in question may reasonably be adopted, implemented, and utilized.

§ 16.3 Digital discrimination of access prohibited.

(a) This section provides the Commission's interpretation of actions that constitute digital discrimination of access under 47 U.S.C. 1754.

(b) It shall be unlawful for any broadband provider, or covered entity as described in this part, to adopt, implement or utilize policies or practices, not justified by genuine issues of technical or economic feasibility, that differentially impact consumers' access to broadband internet access service based on their income level, race, ethnicity, color, religion, or national origin or are intended to have such differential impact.

§ 16.4 Findings of discrimination.

(a) *Discriminatory treatment.* The Commission may find that a covered entity engaged in intentional discrimination by direct evidence or circumstantial evidence that the covered entity's policy or practice was adopted, implemented, or utilized with the intent to differentially impact consumers' access to covered services or covered elements of service on one or more of the bases listed in section 60506(b) of the Infrastructure Act.

(b) *Discriminatory effect.* The Commission may find that a covered entity adopted, implemented, or utilized a policy or practice that had a discriminatory effect on one or more of the bases listed in section 60506(b) of the Infrastructure Act. A discriminatory effect occurs when a facially neutral policy or practice differentially impacts consumers' access to covered services or covered elements of service.

§ 16.5 Technical and economic feasibility.

(a) Where the Commission determines that a covered entity's policy or practice is motivated by discriminatory intent on the basis of income level, race, ethnicity, color, religion, or national origin, the entity will not be found liable for digital discrimination of access if the policy or practice is justified by genuine issues of technical or economic feasibility.

(b) Where the Commission determines that a covered entity's policy or practice has discriminatory effects on the basis of income level, race, ethnicity, color, religion, or national origin, the entity will not be found liable for digital discrimination of access if the policy or practice is justified by genuine issues of technical or economic feasibility.

(c) Covered entities have the burden of proving to the Commission that a policy or practice under investigation is justified by genuine issues of technical or economic feasibility. This may include proof that available, less discriminatory alternatives were not reasonably achievable at the time the policy or practice was adopted, implemented, or utilized because of genuine technical or economic constraints.

(d) Genuine issues of technical or economic feasibility must be demonstrated by a preponderance of the evidence, with the covered entity providing the Commission all of the empirical evidence and documentation needed to substantiate the technical or economic justifications for the policy or practice under investigation.

(e) The Commission will determine on a case-by-case basis whether genuine issues of technical or economic feasibility justified the adoption, implementation, or utilization of a policy or practice that was motivated by discriminatory intent on the basis of income level, race, ethnicity, color, religion, or national origin, or that caused discriminatory effects on one or more of these bases.

§ 16.6 Enforcement.

Any allegation that a covered entity has violated the regulations in this part may be referred to the Commission's Enforcement Bureau.

§ 16.7 Advisory opinions.

(a) *Procedures.* (1) Any entity that is subject to the Commission's rules implementing section 60506 of the Infrastructure Act may request an advisory opinion from the Enforcement Bureau regarding the permissibility of its own policies and practices affecting access to broadband internet access service. Requests for advisory opinions may be filed via the Commission's website or with the Office of the Secretary and must be copied to the Chief of the Enforcement Bureau and the Chief of the Investigations and Hearings Division of the Enforcement Bureau.

(2) The Enforcement Bureau may, in its discretion, determine whether to issue an advisory opinion in response to a particular request or group of requests and will inform each requesting entity, in writing, whether the Bureau plans to issue an advisory opinion regarding the matter in question.

(3) Requests for advisory opinions must relate to a current or proposed policy or practice that the requesting party intends to pursue. The Enforcement Bureau will not respond to requests if the same or substantially the same conduct is the subject of a current government investigation or proceeding, including any ongoing litigation or open rulemaking at the Commission.

(4) Requests for advisory opinions must be accompanied by all material information sufficient for Enforcement Bureau staff to make a determination on the proposed conduct for which review is requested. Requesters must certify that factual representations made to the Bureau are truthful and accurate, and that they have not intentionally omitted any information from the request. A request for an advisory opinion that is submitted by a business entity or an organization must be executed by an individual who is authorized to act on behalf of that entity or organization.

(5) Enforcement Bureau staff will have discretion to ask parties requesting opinions, as well as other parties that may have information relevant to the request or that may be impacted by the proposed conduct, for additional information that the staff deems necessary to respond to the request. Such additional information, if furnished orally or during an in-person conference with Bureau staff, shall be promptly confirmed in writing. Parties are not obligated to respond to staff inquiries related to advisory opinions. If a requesting party fails to respond to a staff inquiry, then the Bureau may dismiss that party's request for an advisory opinion. If a party voluntarily responds to a staff inquiry for additional information, then it must do so by a deadline to be specified by Bureau staff. Advisory opinions will expressly state that they rely on the representations made by the requesting party, and that they are premised on the specific facts and representations in the request and any supplemental submissions.

(b) *Response.* After review of a request submitted hereunder, the Enforcement Bureau will:

(1) Issue an advisory opinion that will state the Bureau's determination as to whether or not the policy or practice detailed in the request complies with the Commission's rules implementing section 60506 of the Infrastructure Act;

(2) Issue a written statement declining to respond to the request; or

(3) Take such other position or action as it considers appropriate. An advisory opinion states only the enforcement intention of the Enforcement Bureau as of the date of the opinion, and it is not binding on any party. Advisory opinions will be issued without prejudice to the Enforcement Bureau or the Commission to reconsider the questions involved, or to rescind or revoke the opinion. Advisory opinions will not be subject to appeal or further review.

(c) *Enforcement effect.* The Enforcement Bureau will have discretion to indicate the Bureau's lack of enforcement intent in an advisory opinion based on the facts, representations, and warranties made by the requesting party. If the Bureau determines that a policy or practice currently in effect violates Commission rules, it may provide in the opinion that it will not take enforcement action within a designated time period if the policy or practice is promptly corrected. The requesting party may rely on the opinion only to the extent that the request fully and accurately contains all the material facts and circumstances. Should the Bureau or Commission rescind a previously issued advisory opinion, the requesting party must promptly discontinue use of the relevant policy or practice in order to remain in compliance with our rules.

(d) *Public disclosure.* The Enforcement Bureau will make advisory opinions available to the public on the Commission's website. The Bureau will also publish the initial request for guidance and any associated materials. Parties soliciting advisory opinions may request confidential treatment of information submitted in connection with a request for an advisory opinion pursuant to § 0.459 of this subchapter.

(e) *Withdrawal of request.* Any requesting party may withdraw a request for review at any time prior to receipt of notice that the Enforcement Bureau intends to issue an adverse opinion, or the issuance of an opinion. The Enforcement Bureau remains free, however, to submit comments to such requesting party as it deems appropriate. Failure to take action after receipt of documents or information,

whether submitted pursuant to this procedure or otherwise, does not in any way limit or stop the Bureau from taking such action at such time thereafter as it deems appropriate. The Bureau reserves the right to retain documents submitted to it under this procedure or otherwise and to use them for all governmental purposes.

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